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2d Session

COMMITTEE PRINT

SENATE

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No. —

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LABOR-MANAGEMENT RELATIONS

REPORT

OF THE

JOINT COMMITTEE ON LABOR-MANAGEMENT RELATIONS

CONGRESS OF THE UNITED STATES

PURSUANT TO

SECTION 401 OF PUBLIC LAW 101 (80TH CONG.) ESTABLISHING A JOINT CONGRESSIONAL COMMITTEE TO BE KNOWN AS THE JOINT COMMITTEE ON LABOR-MANAGEMENT RELATIONS

UNITED STATES
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JOINT COMMITTEE ON LABOR-MANAGEMENT RELATIONS
[Created pursuant to sec. 401 of Public Law 101, 80th Cong.]

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80TH CONGRESS } COMMITTEE PRINT { REPORT
2d Session } SENATE { No. 246
Pt. 3

LABOR-MANAGEMENT RELATIONS

——— —, ——. — Ordered to be printed

Mr. BALL, from the Joint Committee on Labor-Management Relations, submitted the following

REPORT

[Pursuant to sec. 401 of Public Law 101, 80th Cong.]

The Joint Committee on Labor-Management Relations was established under the terms of section 401 of Public Law 101, enacted June 23, 1947. Relevant sections are as follows:

SEC. 401. There is hereby established a joint congressional committee to be known as the Joint Committee on Labor-Management Relations (hereafter referred to as the committee), and to be composed of seven members of the Senate Committee on Labor and Public Welfare, to be appointed by the President pro tempore of the Senate, and seven members of the House of Representatives Committee on Education and Labor, to be appointed by the Speaker of the House of Representatives. A vacancy in membership of the committee shall not affect the powers of the remaining members to execute the functions of the committee, and shall be filled in the same manner as the original selection. The committee shall select a chairman and a vice chairman from among its members.

SEC. 402. The committee, acting as a whole or by subcommittee, shall conduct a thorough study and investigation of the entire field of labor-management relations, including but not limited to—

(1) the means by which permanent friendly cooperation between employers and employees and stability of labor relations may be secured throughout the United States;

(2) the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems;

(3) the internal organization and administration of labor unions, with special attention to the impact on individuals of collective agreements requiring membership in unions as a condition of employment;

(4) the labor relations policies and practices of employers and associations of employers;

(5) the desirability of welfare funds for the benefit of employees and their relation to the social-security system;

(6) the methods and procedures for best carrying out the collective-bargaining processes, with special attention to the effects of industry-wide or regional bargaining upon the national economy;

(7) the administration and operation of existing Federal laws relating to labor relations; and

(8) such other problems and subjects in the field of labor-management relations as the committee deems appropriate.

SEC. 403. The committee shall report to the Senate and the House of Representatives not later than March 15, 1948, the results of its study and investigation,

together with such recommendations as to necessary legislation and such other recommendations as it may deem advisable, and shall make its final report not later than March 1, 1949.

The report of March 15, 1948, referred to in section 403 above, was presented to the Congress on that date by this committee. It bears Senate Report No. 986, and is entitled "Report of the Joint Committee on Labor-Management Relations—Congress of the United States." Part II of said Report No. 986 presents minority views.

The material set out below is the final report which the statute directs this committee to present to the Congress not later than March 1, 1949.

Summary of Findings and Recommendations

Many factors have militated against the creation of a calm and temperate atmosphere wherein the affected parties could learn, and practice, duties and responsibilities created by the Labor Management Relations Act of 1947. Unions and employers have not yet had the guidance of NLRB interpretation upon many of its provisions. In spite of these handicaps, the committee has found the law to be working well, without undue hardship upon labor organizations, employers, or employees.

It was to be expected that various specific provisions would be criticized by both organized labor and management. Restraining either employers or labor organizations does not necessarily grant greater freedom to the other group. Many of the law's provisions sought to promote the benefit of the general public and the individual worker. Where we have found constructive criticism justifiable we have recommended corrective amendments. The committee's findings and recommendations may be summarized as follows:

Findings

1. The injunction remedy has been rarely used and then only when the public health or safety was threatened, the public welfare vitally affected, or when an employer's business was about to be ruined by a secondary boycott. The Board has obtained two injunctions against labor organizations and one against an employer under the discretionary power given it by section 10 (j). The President has used the national emergency injunction to prevent or stop six strikes vitally affecting health and safety. Fifteen strikes in support of secondary boycotts have been enjoined. In each instance the injunction has issued upon the application of the Attorney General or the general counsel of the NLRB after full and impartial investigation of the facts. The act makes no provision for injunctions on the application of private parties. (See p. 28.)

2. The number and disposition of the suits brought by and against labor organizations under the act demonstrate that neither unions nor employers desire to recover money damages from the other, but that the availability of the remedy has encouraged each to act with a deeper sense of responsibility. In 37 cases employers have been plaintiffs against unions, and labor organizations have brought 19 actions against employers. It has been general practice for these suits to be dismissed by agreement of the parties after agreement has been reached in contract negotiation or strike settlement. In no case to date has either obtained a judgment for damages against the other. (See p. 31.)

3. Elimination of Communist partisans and adherents from official posts and positions of responsibility in both national and local unions is one of the most pronounced and significant effects of the Labor Management Relations Act, 1947. There are still unions, in a steadily declining number, however, whose officials have not filed non-Communist affidavits in compliance with the law. A number of unions have fully met this provision with the ouster of officials who have failed to meet this statutory requirement. It has been demonstrated that the American workingman will take steps to rid his union of communistic leadership when the character of that leadership has been identified to his satisfaction. (See p. 45.)

4. Unfair-labor-practice complaints against employers filed with NLRB under the Labor Management Act are still far in excess of similar complaints filed against unions. In the first 15 months of the law's operation 4,136 charges of this nature were filed against employers, 1,188 charges against unions; 660 of the charges against unions were filed by employers, the remainder being filed by individuals and other unions. (See p. 30.)

5. Wages, either in average hourly earnings or in over-all take-home pay, have not suffered through operation of any of the law's provisions. The Bureau of Labor Statistics reveals that average hourly earnings of all industrial workers increased in monthly progression from $1.236 in August, 1947 to $1.363 in September, 1948. Increase in union membership since passage of the act has also been constant with unions other than those of the left-wing group whose officers have not made the non-Communist affidavit. (See p. 29.)

6. The withdrawal of the Government's encouragement of organization of supervisory personnel has served to promote the establishment by employers of plans creating many new benefits for supervisory employees. The prediction that this class of employees would strike for recognition and bargaining rights for their unions has utterly failed to materialize. (See pp. 55–57.)

7. The new status of the Mediation and Conciliation Service as an independent agency has enabled its conciliators to gain and maintain the confidence of both parties to a dispute and greatly enhanced their effectiveness in the prevention and settlement of strikes. Further, this has been accomplished with a personnel and an over-all budget smaller than this agency had when a part of the Department of Labor. (See p. 16.)

8. The separation of the prosecution and judicial functions of the NLRB has promoted more public confidence in that agency and enabled it to carry out its duties with greater cooperation from the litigants who appear before it. (See p. 9.)

9. Strikes, in number, in man-days of idleness, and in total number of workers affected, have declined since the law became operative. The committee has substantial reason to believe the 60-day-notice requirement, the prohibition of jurisdictional strikes and strikes in support of secondary boycotts, the provision making unions suable for breach of contract, the more equitable balancing of rights of employers and employees, and other adjustment procedures set up in this law,

are effectively discouraging strikes and controversial work stoppages. (See p. 28.)

10. The filing of financial statements of labor unions covering receipts and expenditures, reserves, and other data has been productive of improved and standardized practice in accounting for such funds and put added emphasis on the responsibility of union officers for their safekeeping. (See p. 34.)

11. The compilation and assembly of labor-management contracts in a central agency in the Department of Labor has already demonstrated its value and merit. As it has been developed and expanded, this collection of contracts affords a beneficial and well-worth-while service for labor organizations, employers, and the public. (See p. 33.)

12. The experience with the act's amendments to the Federal Corrupt Practices Act prohibiting political expenditures as well as contributions by corporations and labor organizations has been too limited to now evaluate their merit. While the restrictions were never intended to limit the freedom of the press, litigation over its application to union newspapers served to create uncertainty as to the meaning of the section. The Corrupt Practices Act has been almost without court interpretation since its passage in 1907. Because of the danger of undue influence and control over successfully supported candidates and because such diversion of corporate and union funds may well be opposed by the stockholders and members to whom they really belong, the subject should continue to have the close attention of Congress. (See pp. 63–65.)

13. Jurisdictional disputes which have plagued the building and construction industry for years are being settled without strikes and consequent losses to the workers involved and the general public. The act's restrictions were the impetus for the assumption of the responsibility for the adjustment of the disputes by the parent unions involved, and are necessary to insure the continuation of such assumption of responsibility. Such cases are now being determined, without recourse to the NLRB, by the Joint Board for the Settlement of Jurisdictional Disputes created by the building-trades unions and various contractor associations for their final and binding settlement. (See pp. 57–58.)

14. Rights of individual workers in job security, in seniority, in the disposal of grievances, and in relationships with employers have been materially strengthened and clarified under terms of the act which prescribe boundaries of the rights of both employers and unions.

15. The number of secondary boycotts is steadily decreasing. The few cases in which the new law has been used as a means of terminating them have conclusively demonstrated its effectiveness. In most instances the mere filing of a charge serves to stop the practice without any action by the Board becoming necessary.

16. There have been a number of strikes in which the major issue was the union's demand for continuation of a closed-shop condition of employment. In some instances the employers have yielded to such demands and entered into contracts of doubtful legality. Other labor organizations who have had closed shops for many years have availed themselves of the orderly procedures of the act to obtain union-shop contracts. The act's prohibition has prevented the extension of the closed shop into industries where it had not become common practice. The committee believes that the only alternative to prohibition of the closed shop is the definitely less desirable complete Government regulation of the internal affairs of labor organizations. If there is to be a closed shop, then we can hardly permit a closed union. The class of workers to be admitted to the union, their right to democratic election for officers, and the procedure under which they may be expelled from the union, thus losing their jobs, would have to be subject to regulation by law or by the Board.

17. The provisions of the act dealing with union welfare funds are inadequate in many respects, and the whole subject requires further study, with probably a much more fundamental regulation. Section 302 was written largely to prevent the payment into welfare funds of moneys earned by employees, calling for compulsory deductions, the proceeds often completely at the disposition of the officers of labor unions. To a certain extent, the law has resulted in a much more impartial supervision and audit of these funds and has protected the equal rights of the employees entitled to participate. But we have pointed out (see pp. 97–99) developments which may permit circumvention of all the act's restrictions by provisions for employees' contributions to an intermediary.

But there are more fundamental questions relating to welfare funds. We have a general Federal Social Security System, and various State unemployment compensation laws and other welfare provisions. How far should an employer, or an industry perhaps by majority vote of some employers over the opposition of others, be allowed to set up a supplemental fund? What forms of security benefits should such a supplemental fund be permitted to cover? The growth of such funds raises important questions regarding their effect on the avoidance of Federal taxation. Already the Treasury regulates in detail the character of pension funds for employees. Welfare funds are not a matter of annual contract. They cannot be set up for one year and changed at will. The payments are very much in the nature of a permanent tax, increasing the cost of production in any industry affected. Congress has already regulated the details of the funds set up for the railroad industry, and has levied a tax to support it. Probably such detailed regulation is not desirable for most industries, but particularly in the case of an industry fund where one employer is often required to contribute to the welfare of employees of other less progressive employers, it seems that there might be a definition of the character of the benefits to be granted of a permanent nature supplementing the social-security acts, and perhaps some limit on the total cost to the industry. The relationship of such funds to the new social-security amendments should be carefully studied.

The committee has given consideration to the question whether welfare funds should be subject to mandatory collective bargaining. The committee is not in complete agreement on this question. A few members believe that the subject presents so many and varied practical difficulties for collective bargaining on an annual basis that the Federal Government should not force employers to bargain upon it, but should leave them free to do so if they so desire. Other members of the committee believe that to the extent contracts for welfare funds are within proper legal limits, and can be legally entered into by the

parties, they are just as much a condition of employment as wages or hours; that any limitation ought to be on the extent of the contract rather than the negotiation of it. This problem also will require additional study after the Supreme Court has passed on the requirements of the present law.

THE COMMITTEE'S RECOMMENDATIONS

1. In 98.2 percent of the elections so far held, the union shop has been authorized and 84 percent of the eligible voters voted in favor of the union shop. The NLRB has found it impossible to conduct these elections where employment is transitory. The committee recommends an amendment eliminating the requirement for such elections as a condition precedent to the right to enter into a legal union-shop contract. The right of the employees to an election to prevent or discontinue a union-shop condition of employment should, however, be retained in the law. The committee further recommends that all other restrictions on compulsory union membership provided by the act be continued. (See pp. 49, 52–54.)

2. The non-Communist affidavit requirement should be perfected to make it even more effective as an aid to unions and their members in their desire to drive Communists from positions of power in labor organizations. To this end the term "officer" should be defined to include members of all policy-forming, governing, and negotiating authority. While the committee has not discovered any evidence that a substantial number of Communists may be found among corporate officers, employers, or management representatives who are responsible for labor relations, in the interest of creating and preserving a balance in the law as between labor and management, it is recommended that they also be required to file non-Communist affidavits as a condition precedent to use of the act. (See p. 44.)

3. The jurisdiction of the NLRB should be limited to exclude local businesses whose operations only remotely affect interstate commerce. In order that labor organizations and small-business men may know whether they are subject to the act some boundaries for the Board's jurisdiction must be fixed. (See pp. 11–15.)

4. In view of the difference of opinion as to the construction of section 8 (d), the provision should be amended to clearly permit a strike during the term of a contract 60 days after giving the required notice when the parties have provided that their contract may be reopened during its term. (See pp. 62–63.)

5. In the light of the experience with the provisions respecting national emergencies, two changes appear to be desirable. To permit the Mediation and Conciliation Service to continue its efforts to settle the dispute right up until the strike dead line, the emergency board should not come into existence until the granting of the injunction. The referendum on the employers' last offer has created great practical difficulties without tangible result and should be eliminated. (See pp. 21–22.)

6. Mass and coercive picketing is now on unfair labor practice, but the "cease and desist" remedy, ordered a year later, has proven to be ineffectual. The right of the NLRB to require the union in such cases to reimburse the workers who have been denied access to their jobs by such picketing should be made clear. (See pp. 82–83.)

7. A substantial proportion of the strikes during 1948, have had as a major purpose the compulsion of the employer to grant conditions of employment which would subject him to unfair labor practice charges or criminal liabilities. It is recommended that such strikes be made subject to the same restrictions as secondary boycotts or in the alternative that labor organizations and employees participating in strikes for such illegal purposes be denied all of the protections of the act. (See pp. 83–87.)

8. In a number of instances, because the committee believed the words of the act had not been interpreted to carry out the intent of Congress, minor amendments have been suggested. The ruling of the Department of Justice with respect to the restrictions on "check-off" (see p. 78), the decision of the NLRB that the "free speech" guaranty does not apply in preelection campaigns (see p. 54), and interpretations of the restrictions on union welfare funds (see p. 97) are in this category. We have also recommended an amendment to cure a deficiency in the act with respect to the jurisdiction of Territorial courts (see p. 61) and an amendment making more certain the respective functions of the Board and the general counsel (see pp. 7–9.)

REORGANIZATION OF THE BOARD

SEPARATION OF FUNCTIONS

In creating the office of general counsel of the Board, Congress was attempting both to remedy the often-repeated complaint that the Board acted as grand jury, prosecutor, judge, and jury, and to free the Board of its administrative duties in order that it might have more time to give to its function of deciding cases (conference report, pp. 37, 38). Before providing for such separation, committees in both Houses of Congress gave consideration to a more complete separation. Bills which would have vested the prosecuting function of the agency in the Department of Justice or Labor, or in a newly created separate agency, were considered. Factors such as the saving in housekeeping expenses persuaded the drafters of the law to attempt the semiseparation that the law provides.

After 16 months' experience, it is possible to assess the value of both the principle of separation and the workability of the plan the act provides.

Section 3 (d) of the act provides:

> There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

The statute left much to the Board and general counsel in the working out of the details of separation. Before the effective date of the law they had arrived at an agreement by which the Board delegated various functions to the general counsel, which by the strict letter of the law it might have retained to itself. A copy of the memorandum

describing the statutory and delegated functions of the general counsel is printed in the appendix of this report.

In general, the delegation carried out what we believe to have been the congressional intent of confining the Board to the functions of a court, with duties of administration and supervision over regional offices handled by the general counsel. The statute is silent on the enforcement of Board orders in the courts. The agreement leaves to the Board the decision of whether to seek enforcement, but once decided upon, the general counsel appears and represents the Board. While the statute gives the general counsel final authority with respect to investigation of charges and issuance of complaints, it contains no directions with respect to representation matters. The agreement gives the general counsel authority to receive and process all petitions in representation cases while reserving to the Board power of review over the general counsel's dismissal of such matters. Both of the delegations just described have eliminated the need for separate staffs to carry out these duties.

Section 10 (l) in providing for injunctions in secondary boycott cases unquestionably gives final authority to the general counsel's office, while section 10 (j) permitting the Board to seek injunctions after complaint as a discretionary matter would seem to lodge the authority in the Board. The agreement gives to the general counsel final authority in initiating and prosecuting injunction proceedings under both sections. Since at the initial stage only the general counsel has knowledge of the facts, and for the Board to exercise the discretion it would have to familiarize itself with the facts of a case upon which it would later pass judgment, the delegation was an obvious one to make.

The agreement gave the general counsel full power of selection, retention, transfer, promotion, demotion, discipline, and discharge of all personnel over which the act gives him supervision. Obviously these details of separation, so necessary for effective administration, could not have been agreed upon without a spirit of cooperation on the part of the general counsel and the individual Board members.

During his testimony before the committee, the general counsel suggested that the committee give consideration to an amendment which would give permanence to the delegation of authority made by the agreement (hearings, p. 1167). Following his testimony the Board's chairman wrote to the committee expressing a desire to be heard in the event the general counsel presented amendments to accomplish the result he appeared to favor. We have heard nothing further from either in the matter but have discussed the subject informally with individual Board members and the general counsel. The Board members have indicated their opposition to a statutory delegation of all the authorities granted in the agreement. There has been some desire for reconsideration of the delegation of the discretionary injunction seeking power.

The committee believes there should be further statutory delineation of the respective powers of the Board and the general counsel. While the present occupants of the positions have operated with excellent cooperation, membership may change, and could create an entirely different atmosphere. The Board and the general counsel are the best judges of what is necessary to perpetuate a proper delegation. The agreement expressed their original views upon the subject. When they have had sufficient experience to reevaluate the delegation of powers, we suggest that they express their views in order that an amendment may be provided.

The committee has found that the separation of the prosecution and judicial functions of the Board has accomplished many desirable results. Under the Wagner Act the Board had delegated general supervision over field offices and their nonlegal personnel to its director of the field division. Field attorneys were directed by a regional attorney who reported to the general counsel, who also had general supervision over attorneys in the Washington office. This divided line of authority was frequently a source of friction, both in the field offices, and in the higher levels of Washington supervision. The placing of all such personnel under one directing head, the general counsel, has eliminated the possibility of the divided loyalties that the old system produced.

The good results of the separation are the most noticeable in the field offices. Almost without exception, the field office personnel have expressed unqualified satisfaction with the status given them by the act. Their contact with the union representatives, employers, and the general public, is a daily one. Most of them served the agency under the Wagner Act, when all of their activities were in the behalf of labor organizations. They investigated and processed cases knowing that if they incurred the disfavor of the unions in their region they might expect a transfer. In the eyes of most employers, some union representatives and a large part of the general public, NLRB employees operated as an adjunct of the labor-union movement; servants of an agency which was grand jury, prosecutor, and judge of an employer's relations with his employees.

Under the Taft-Hartley Act they serve on the staff of the general counsel investigating and prosecuting a case against an employer on behalf of a union one day, while the next day may find them just as actively processing a case against that same union on behalf of an employer or an employee. They have found that they can do so without incurring the enmity of either group. They are now public servants.

THE FIVE-MEMBER BOARD

Section 3 (a) of the act increased the membership of the Board from three to five members, and authorized it to delegate its powers to any three of such members. Acting under this authority, the Board in January 1948, established five panels for consideration of cases. Each of the Board members acts as chairman of one panel, and serves on two additional panels. Decisions in complaint cases arising under the Taft-Hartley law, and in representation matters involving novel or complicated issues, are still made by the full Board. A large majority of the cases, however, are being determined by the three-member panels.

The Board has never been without its backlog of cases, and delay in case handling and decision has always been one of its greatest problems. Its members who have served on both the three- and five-man board give their indorsement to the larger board and the panel system (hearings, p. 1123). They state that it has enabled them to dispose of cases with greater dispatch.

In an effort to reduce the backlog of cases and provide earlier decisions, the Board has sought to find other short cuts which do not detract from adequate consideration of the matters before them. It has adopted the device of using printed form decisions to dispose of many representation cases which present no significant issues of fact. It has also decided to circulate draft opinions on the responsibility of the Board member assigned in simple unfair labor practice cases rather than the longer method of full memorandum and consideration at a Board meeting (hearings, p. 1123.)

The committee has not been able to determine to its satisfaction the reason for the continuing large backlog of cases. If union-shop authorization elections are eliminated from consideration, the intake of cases under the Taft-Hartley law is almost the same as under the Wagner Act. The Chairman of the Board estimated a volume of 15,000 cases in 1948 which is exactly the same number of cases filed during the last year of operation under the Wagner Act (hearings, p. 1129). Union-shop authorization cases play little part in the work of the Board, for only about one-third of 1 percent of such cases have required Board consideration (hearings, p. 50). About 85 percent of the 15,000 cases are disposed of without reaching the Board by way of withdrawals, dismissals, and consent adjustment (hearings, p. 1130). While there has been some decrease in the number of voluntary adjustments, the withdrawals and dismissals have continued at about the same rate as under the Wagner Act (hearings, p. 1130).

While there are encouraging signs in the Board statistics showing a gradual reduction of backlog, it is also apparent that there is too great a lapse of time between the filing of a charge and the Board's decision. In 1946 the average time between charge and decision was 332 days. In 1948 that average time had increased to 631 days (hearings, p. 1122). As of November 1, 1948, there were still over 500 Wagner Act unfair labor practice cases remaining in various stages on the agency's docket. Ten of these cases were passed upon by trial examiners prior to passage of the act on June 22, 1947.

One of the first charges filed under the Taft-Hartley Act was by the Baltimore Graphic Arts League against the International Typographical Union. The charge was filed September 23, 1947, and on December 1, 1948, the Board's decision was still awaited. The Board, as of December 1, 1948, had decided nine unfair labor practice cases filed under the Taft-Hartley Act. This figure does not include the substantial number of cases wherein the Board merely entered its orders pursuant to the stipulations for settlement entered into by the parties either before or after such cases had been heard by trial examiners.

During the committee's hearings, a number of suggestions were made which appealed to the committee as means for reduction of the Board's backlog and accelerated case handling. Issues as to the legal interpretation of a certain provision of the statute often arise at about the same time in various regions of the country. The general counsel is well able to judge whether a case filed in one region will have counterparts in many other regions. Decision of the first case at an early stage will permit everyone to know the law upon the subject. A device whereby the general counsel might certify such a case to the Board for expedited action is possible without statutory amendment and might serve to reduce the possibility of further similar violations occurring.

In its delegation of authority to the general counsel, the Board has divested itself of most of its nonjudicial functions. There may be other administrative duties which could be properly delegated. The granting of oral argument in a greater number of cases with the possibility of a decision immediately after the argument should be considered. Since the general counsel now participates in such oral arguments they should accurately present the issues and the facts to the Board. The Board has continued to accept and consider exceptions to trial examiners' reports which except generally to every finding and recommendation of trial examiners without supporting reference to specific evidence in the record. Its rules with respect to exceptions might be tightened up to eliminate consideration of much irrelevant evidence.

Delay in case handling tends to encourage use of self-help by the litigants, which may take the form of strikes or lock-outs. Delay was a problem under the Wagner Act and has become a greater problem under the Taft-Hartley Act without any apparent justification by volume of cases being considered.

Jurisdiction of the National Labor Relations Board

The Wagner Act gave jurisdiction to the National Labor Relations Board to prevent any person from engaging in an unfair labor practice affecting commerce (sec. 10A). The term "affecting commerce" was defined to mean in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led, or tending to lead, to a labor dispute burdening or obstructing commerce, or the free flow of commerce (sec. 2 (7)). The Taft-Hartley Act retained these two provisions without change.

The committee has received a considerable volume of mail from small-business interests protesting the assumption of jurisdiction over their businesses by the Board. During the committee's hearings, witnesses from both labor organizations and employers added their voices to the protest (hearings, pp. 984, 1064). The Committee on Expenditures in the Executive Departments of the House of Representatives conducted hearings "to ascertain scope of interpretation by general counsel of National Labor Relations Board of the term 'affecting commerce,' as used in the Labor Management Relations Act, 1947" (hearings, pp. 11–49).

That there has not been agreement between the Board and the general counsel as to the extent of the Board's jurisdiction was evident from their testimony at the committee's hearings (hearings, pp. 1121, 1155–1156, 1157–1165).

The committee has studied decisions of the Board in which there was issue over the jurisdiction to discover to what extent jurisdiction had been taken over those businesses which have been generally considered as local in nature. Individual decisions in relation to various classes of small business are set out below.

Retail grocery chains.—The Board declined to take jurisdiction in *Hom-Ond Food Stores* (16–R–2427). The employer operated a chain of retail grocery stores, all located in one State. All of his purchases

were made from wholesalers within the same State, and all sales were made within this State.

In a 4-to-1 decision, the Board took jurisdiction in *Providence Public Market* (1–RC–443). The employer operated eight retail grocery stores in six cities within one State. His annual purchases exceeded $2,000,000 in value, and 75 percent of it came from outside the State. His sales were all within the State.

Baking companies.—Jurisdiction was declined in *Sta-Kleen Bakery* (5–R–27) by a 3-to-2 decision. The employer's purchases exceeded $600,000 per year, and 70 percent came from outside the State. All of the sales were within the State.

Jurisdiction was taken in *Phoenix Pie* (9–RC–105). The employer's purchases exceeded $100,000 per year, and 20 percent came from outside the State. Sixty percent of the annual sales of $150,000 in value were delivered in its own trucks, operating in three States.

Jurisdiction was declined in *O'Rourke Baking* (3–RC–112). The employer's annual purchases exceeded $800,000 in value, and 20 percent came from outside the State. The sales were all within the State.

Bus companies.—In a 4-to-1 decision, the Board took jurisdiction in *Amarillo Bus Co.* (16–RC–46). The employer furnished the only means of public transportation in a city of 70,000 people, purchased a substantial amount of equipment outside the State, and carried the employees of several large industries to their places of employment.

The Board also took jurisdiction in *El Paso-Ysleta Bus Co.* (33–RC–15). Here the employer operated 13 busses over a 12-mile route between 2 cities for an annual income of $84,000. No exchange of passengers was made with other transportation systems, but some employees of large industries were carried to and from work.

Building and construction companies.—In *J. H. Patterson* (79 N. L. R. B. 48), the Board by a 3-to-2 decision, took jurisdiction of a company engaged in selling building materials, coal, and fuel oil. The employer annually purchased materials valued in excess of $250,000 from outside the State.

Jurisdiction was declined by a 3-to-2 decision in *Cordele Sash, Door & Lumber* (10–RC–15). Here the employer operated a lumber mill and a retail business in which lumber and hardware were sold. It annually purchased $68,000 worth of goods outside of the State to sell in its store. Its annual sales, valued at $629,000, were all made within the State.

Auto dealers.—The Board in a 3-to-2 decision took jurisdiction in *Leddon-White Truck* (10–R–2794). The employer was engaged in the retail sale and servicing of trucks. It annually sold trucks valued at $300,000, all of which came to it from outside the State.

Jurisdiction was taken also in *Dome Tractor* (20–RC–57). Here the employer, engaged in the sale and servicing of farm implements, annually purchased such implements, valued at $223,000, from a local distributor, and made all sales within the State.

Office buildings.—In *Midland Building Co.* (17–RD–4) the Board declined to take jurisdiction of a Kansas City office building whose tenants were, for the most part, interstate companies.

Dry-goods store.—In *Parks-Belk* (10–RC–25) jurisdiction was taken of a small store selling dry goods and women's apparel. About one-half of its annual purchases, valued at $175,000, came from outside the State, and all of its annual sales, amounting to $250,000, were made to local customers.

Optical companies.—Jurisdiction was declined in *Barnett Optical Corp.* (15–RC–94). The employer operated one store in New Orleans, where it ground lenses and sold glasses. Almost one-half of its annual purchases, valued at $42,000, came from outside the State. In two other cases involving optical companies, with similar business operations, jurisdiction was declined (*Pan American Optical*, 10–RC–185; *Nola Optical*, 79 N. L. R. B. 160).

Photography.—In *Sun Photo* (21–RC–320) jurisdiction was declined. The employer operated a 1-shop photo-finishing service with 11 employees.

Co-op.—Jurisdiction was declined in *Wawina Co-Op Society* (18–RM–25). Here the employer was engaged in the retail sale of general merchandise and farm equipment, employing eight persons and operating two stores in Minnesota. Its annual purchases were valued at $190,000, and approximately 62 percent came to it from outside the State.

Small manufacturing.—The Board, in a 4-to-1 decision, declined jurisdiction in *Screw Machine Products* (30–RC–82). The employer's annual purchases, valued at $40,000, were all made from wholesalers within the State, and all products were sold within the State.

Hotels.—In the hearings conducted by the committee, and in the hearings conducted in the House of Representatives, the question of the Board's jurisdiction over hotels received considerable attention. Spokesmen for both the hotel industry and for the union claiming jurisdiction over certain categories of hotel employees were in agreement that the Board should not take jurisdiction over hotels. The general counsel testified that, in his opinion, they were covered (hearings p. 1162). The Board has not passed on any case involving a hotel. A number of cases have been initiated, but in each instance were withdrawn before formal action was taken.

In declining to accept jurisdiction, the Board has stated a variety of reasons. In one case, the expression "essentially local in character" is used; in others, "too remote or insubstantial effect on commerce," or "predominately local nature of operations," or "operations inherently local"; and in many, "it would not effectuate the policies and purposes of the act." There are frequently dissents by one or two members, but the identity of the dissenting members changes from case to case. In some cases the number of employees is mentioned, but how much weight is given to that factor cannot be determined. It should be noted that the general counsel believes jurisdiction should be asserted in all of the cases cited.

A review of the cases justifies the observation that the small-business man cannot know, and it will be some time before he can ascertain whether or not his business is subject to the jurisdiction of the Board. He does not know whether he can legally enter into a compulsory membership contract with a union without first insisting upon a union-shop authorization election. If he takes his case to the Board and jurisdiction is declined, he may or may not know where he stands. If his business is in a State having a State act he may find himself in a "no man's land" if jurisdiction is declined on the basis "that it will not effectuate the policies and purposes of the act," for that, in effect, is a

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ruling that the National Board has jurisdiction but does not decide to assert it.

The general counsel has adopted a policy of processing petitions and charges if the Board has "legal" jurisdiction. The courts have held that jurisdiction under the "affecting commerce" limitation is as broad as the commerce power of Congress, and that the operation of the act does not depend upon the volume of commerce affected by the business or industry unless it falls into the "de minimis" category. The general counsel believes that the management and employees of little businesses are equally entitled to protection with those of larger concerns (hearings, p. 1155). He argues that since the act directs prohibitions against unions as well as employers jurisdiction should be taken in cases which the Board would have refused to accept under the Wagner Act. If a union commits the same unfair practice against 100 employers, any 1 of whose operations would have a negligible effect on commerce, the combined impact is far from negligible (hearings, p. 1159).

The Board's Chairman also gave the committee various reasons why the Board should not extend its jurisdiction to cases it would normally have declined to consider under the Wagner Act. The heavy case load was cited. The effect on State boards, which would be virtually without customers if the general counsel's views were accepted, was also pointed out.

The committee believes that small local businesses, retail and service establishments, should not be subject to the act. We have given considerable thought to the framing of a definition of "affecting commerce" which might serve as a guide to the Board and the general counsel, and, at the same time, permit the small-business man to clearly know whether his business is covered by the act.

Use of the words "substantially affecting commerce" was considered and rejected because it was believed doubtful that it would effect a change in the present law. The courts in applying the "de minimis" doctrine have, in effect, said the effect on commerce must be a substantial one. Other than as a means of indicating congressional disapproval to the Board of any extension of the Board's jurisdiction, the addition of the word "substantial" would serve little purpose. It would furnish no guide to the small-business man in doubt as to his coverage.

We have also considered the possibility of exclusion of retail and service businesses from coverage and again been not entirely satisfied with the anticipated results. Use of the word "retail" by implication would be an instruction to the Board to take jurisdiction of a small local wholesaler and at the same time exclude large chain and department stores whose operations have a substantial effect on commerce.

To attempt by broad general terms to exclude businesses whose operations are local in nature would again serve as no guide to the labor organizations and small employers and would amount to little other than an indication of congressional approval of the direction apparently being taken now by the Board.

The most obvious approach, if the jurisdiction of the Board is to be clearly defined, is a mathematical one. The number of persons employed and the volume in dollar value of sales to out-of-State customers are facts which may be ascertained with accuracy. If such a limitation is desirable, the committee recommends use of number of employees in combination with interstate sales.

SETTLEMENT OF LABOR DISPUTES

In our report of March 15, 1948, we expressed our unqualified respect and appreciation for the manner in which Director Cyrus Ching had carried out the policies and purposes of title II of the act in his direction of the new Federal Mediation and Conciliation Service. Mr. Ching has continued to enjoy the confidence of both labor and management, and has been singularly successful in the settlement of disputes.

The act emphasizes an equally important function of mediation and conciliation, which is prevention of disputes that, without such preventive effort, would be apt to arise. Prevention of disputes has continued to be a major program of the new Service. The Service has been greatly assisted in this program by the fact that under section 8 (d) (3), a party desirous of modifying or terminating its contract must notify the Service 30 days before resorting to a strike or lock-out. When these notices are received in the regional offices of the Service they are assigned to a conciliator, if it is judged that a strike at the business involved would substantially affect interstate commerce. The conciliator contacts the parties but does not intervene if they are negotiating. If the dispute has not been settled on the tenth day prior to the deadline for strike action, or he has not been called in by the parties, the conciliator again contacts the parties and may call a joint meeting. In the days before the 30-day notice was required, strikes frequently occurred before the regional offices of the Service had any knowledge that there was a dispute. Mr. Ching believes that in many instances the early intervention of conciliators has prevented a strike.

Also in aid of its preventive program the Service has decreased the size of its regions by the creation of five new regional offices. Regional directors and field office conciliators are now better able to know and understand the problems which may become serious disputes in their regions. They have made it a practice to contact the parties about 60 days after a dispute has been settled to determine whether the agreement is working out satisfactorily. Frequently a conciliator who assists in the settlement of a dispute may recognize factors which, in his opinion, can lead to later disagreements. It is his duty to contact the parties after the strike has been settled and to suggest remedies which have worked satisfactorily for other parties with similar problems. Requests for the advice of the Service have increased, and such advice is solicited by both employers and labor organizations.

Great credit should be given to the Service for its efforts in bringing about the settlement of strikes and threatened strikes which assumed national importance. Director Ching has personally intervened in all of the disputes in which the national emergency sections of the act were invoked. His efforts had much to do with the early settlement of the 1948 east coast shipping strike as well as in the prevention of the strikes in atomic energy plants and the Nation-wide operations of Western Union Telegraph Co.

It has been the policy of the Service to stay out of disputes which do not affect the public interest or substantially affect interstate com-

merce. It has declined to conciliate any representation question, acting on the concept that determination of bargaining representatives has been given exclusively to the NLRB. There has been an increasing delegation of responsibility and discretion to the regional offices by the Washington office of the Service. The committee believes that in each of these policies the Service has carried out the congressional intent of the act.

The committee has noted some expression of opinion for the return of the Service to the Department of Labor. We have evaluated the reasons given for such a move and have been unable to discover any merit in the suggestion. The Service has operated as an independent agency with less personnel than it maintained when a part of the Labor Department. During 1946 its over-all personnel was 488 employees; in 1947, 449 employees; in 1948, 442 employees; and in 1949 its program calls for 388 employees. Nor has its budget been increased as an independent agency.

The Department of Labor is required by its organic act to foster the interests of labor. It has come to be regarded as the driving political arm of the labor union movement. The Secretary recently expressed that concept in his address to the National Conference on State Labor Legislation, when he stated, "I want a department in which all Federal labor laws are administered. I want a department that will be what Sam Gompers wanted it to be—'labor's voice in the President's councils.'"

The Department of Labor is obliged to issue orders and spearhead programs which necessarily are opposed by and alienate a large portion of the employer group. Its Assistant Secretaries are drawn directly from the ranks of organized labor. It has thus disqualified itself for the impartial attitude so necessary for the successful mediation of labor-management disputes. All agree that the greatest asset of the successful conciliator is his ability to gain and maintain the confidence of both parties to a dispute. It is idle to argue that the Service actually operated on an impartial basis while a part of the Department of Labor. Many employers regarded it as not impartial, and complaints of partiality were frequent. The committee has heard no complaints of bias applied to the new independent agency by either labor or employer groups. Its return now to its former position as an arm of the Labor Department would destroy much of that newfound confidence of the employer group, and would completely close the doors of many employers to its efforts to conciliate disputes.

NATIONAL EMERGENCIES

The committee has closely observed the operation of the national emergency sections of the act in each instance where any portion of its provisions were invoked. In the hope of providing some conclusions as to the success of these sections of the act in the prevention or stoppage of those strikes which imperil the national health or safety, we have set out below the relevant facts with respect to each dispute.

Atomic energy

This was a dispute over a new contract between Carbide & Carbon Chemicals Corp., and the Atomic Trades and Labor Council, AFL. The plant involved was the Oak Ridge National Laboratory, which is a Government-owned atomic energy plant operated by the company under a contract with the Atomic Energy Commission.

The issue concerned wage rates and working conditions. The company desired to bring these rates and conditions into line with those of two other atomic energy plants it operated in the Oak Ridge area, and the AFL Council wanted to preserve the differentials.

No settlement having been reached, the employees voted to strike on March 6, 1948. The President appointed a board of inquiry under the emergency provisions of the act on March 5. Thereupon the parties agreed to maintain the status quo until March 19. The board of inquiry submitted its first report on March 15, and 4 days later the Attorney General obtained an injunction, enjoining any strike or lock-out or change in the terms or conditions of employment.

The procedures called for by sections 206 to 210, inclusive, ran their course. In a last offer ballot, conducted by the NLRB, the employees voted by a large majority not to accept the employer's last offer. This last offer took the form of a proposed contract, a copy of which was distributed to each employee prior to the balloting. It was considered to be the most feasible method available under the circumstances, since the dispute did not involve a simple proposition, but six major points of difference and nine of lesser importance.

The injunction was dismissed at the end of 80 days. Immediately the parties sat down, with the assistance of the Federal Mediation and Conciliation Service, and after 52 hours of constant negotiation agreed to a settlement.

Meat packing

This was a wage dispute between the big five meat packers and the United Packinghouse Workers, CIO, who represent approximately three-fourths of the employees in the industry. The Amalgamated Meat Cutters, AFL, who also represent employees in the industry, had previously settled for a 9-cent wage increase. The CIO union demanded 29 cents, but the packers stood firm by their offer of 9 cents. The efforts of the Federal Mediation and Conciliation Service were to no avail. The union went out on strike on March 16, 1948. On the same day, the President appointed a board of inquiry, which held hearings and made its report. However, the President did not instruct the Attorney General to seek an injunction against the strike, evidently on the basis that a national emergency was not involved. The independent meat-packing companies and the small packers were still supplying enough meat, so that a paralyzing shortage did not develop.

The strike was eventually settled when the union agreed to accept terms substantially identical to those which the employers had offered prior to the strike.

Coal No. 1

The first national emergency dispute in the coal industry in 1948 involved the miners' welfare fund. The dispute, which came to a head in March 1948, arose out of the conflicting interpretations of the bituminous-coal contract of 1947. This contract, effective July 1 of that year, provided for a welfare and retirement fund, to which the operators agreed to pay 10 cents for each ton of coal mined. Three trustees were appointed to administer the fund.

By March 1, 1948, the fund had not been activated because the trustees could not agree. John L. Lewis, president of the United Mine Workers, and one of the trustees, insisted that the fund be used to pay pensions of $100 per month to members of the United Mine Workers who had reached the age of 60 and who had been employed in the industry for 20 years. The neutral trustee objected to this proposal, but resigned before the dispute came to a head in March. The third trustee, who had been selected by the operators, in objecting to Lewis' plan stated two principal reasons: (1) That it called for payments to members of the United Mine Workers, whereas he maintained that the payments must by law be confined to employees of the operators contributing to the fund, and (2) that Lewis' plan was not actuarily sound.

Conflicting terminology in the bituminous coal contract of 1947 added to the confusion. One clause stated that the fund should be used to provide pensions "for the members of the United Mine Workers of America or their families or dependents," while another clause stated that the fund should be used to pay "benefits to employees of said operators, their families, and dependents."

On March 12, 1948, because the fund had not been activated, Lewis sent out a letter addressed to all officers and members of his union saying that the operators had dishonored and continued to violate their contract. Immediately the miners proceeded to leave the mines. By March 16 all the mines were closed. The board of inquiry which later reported on the dispute found that this "stoppage of work followed so closely upon the receipt of the letter as to constitute cause and effect." The district court also found that it constituted a strike call (*U. S.* v. *United Mine Workers*, 21 LRRM 2721, Dist. Ct. of D. C., Apr. 19, 1948).

A week later the President appointed a board of inquiry, which made its report on March 31, 1948. On April 3, the President directed the Attorney General to obtain an injunction against the strike, and such order was obtained the same day. However, the work stoppage did not cease until April 12, 1948, when it was announced that a new, neutral trustee had been appointed, and that he and Lewis had approved a plan under which the welfare fund might be activated. Because the strike had continued after the injunction, the court found Lewis and his union guilty of criminal contempt (*U. S.* v. *United Mine Workers*, supra).

Coal No. 2

This dispute involved the terms of a new bituminous coal contract to succeed the 1947 contract which would expire on June 30, 1948. Many questions were involved, including wages, the union shop, and Trustee Van Horn's suit to enjoin the trustees from activating the welfare fund. This suit was pending when the parties sat down to bargain for a new contract and the union took the position that this question would have to be settled before proceeding with the negotiations for a new contract.

Since the parties were deadlocked, the President appointed a board of inquiry, but before it had submitted its report the district court rendered its decision approving the plan for the activation of the welfare fund. The parties accepted this decision and proceeded to negotiate on the terms of the new contract. Although the union had not complied with sections 9 (f) (g) and (h) of the act, it insisted upon retention in the contract of a clause providing: "It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America * * *." The commercial operators agreed to this clause, but the captive mine operators objected on the ground that it was in violation of the Taft-Hartley Act. Thereupon the union struck the captive mines. At about the same time, the captive-mine operators filed an unfair labor practice charge with the NLRB and the general counsel of the Board moved the District Court of the District of Columbia for a preliminary injunction pursuant to section 10 (j) of the act.

However, before the petition for the injunction was heard, the captive-mine operators agreed to the union security clause and the UMW agreed to be bound by the decision of the courts on the validity of the clause, after all appeals had been taken. The court approved this settlement and the miners of the captive coal mines returned to work.

Telephones

This dispute between the American Telephone & Telegraph Co., Long Lines Division, and the CIO's Telephone Workers Union was over the terms of a new contract. The old contract was due to expire May 8, 1948. Negotiations between the parties failed to produce a settlement. The employees continued at work past the deadline pursuant to a request of the Federal Mediation and Conciliation Service.

The President appointed a board of inquiry on May 18, 1948. Thereupon the board stood by while the parties resumed negotiations, and on June 14, 1948, the parties reached an agreement. Thus it was unncessary for the board to hold hearings or file a report, and an injunction was not sought. In this case, invocation of the emergency provisions—the mere appointment of a board of inquiry—initiated a settlement.

Maritime on the east coast, west coast, and Great Lakes

This was a dispute between the shipping companies and some seafaring unions of the east coast, west coast, and the Great Lakes, and the west coast longshoreman. All contracts were due to expire on June 15, 1948. In negotiating for new contracts the main issue was the hiring hall, the unions insisting that it be retained, and the employers objecting that that would be contrary to the Labor Management Relations Act.

Because a strike appeared inevitable, the President appointed a board of inquiry on June 3, 1948, which was 12 days prior to the deadline. This allowed opportunity for the board of inquiry to hold hearings and make its report, so that an injunction could be obtained before a strike occurred. This was done and injunctions were obtained in the district courts in the southern district of New York, the northern district of Ohio, and the northern district of California.

It should be noted that in order to avert a strike in this case, it was necessary to invoke the procedures of the emergency provisions 12 days before the deadline. During these last 12 days the parties were busy preparing for and attending the hearings being held by the two panels of the President's board of inquiry, instead of negotiating and trying to reach a settlement. Hence, negotiations had to cease at a time when they are traditionally most likely to produce a settlement.

On the east coast and the Great Lakes, the parties reached agreement before expiration of the 80-day injunction period. The parties agreed to continue the hiring hall until a judicial determination of its validity.

On the west coast no settlement was reached. Before the expiration of the 80-day period the NLRB sent out ballots containing the employers' last offer. In the case of the members of seagoing unions, the ballots had to be sent to many distant and foreign ports. After the ballots were sent out, the employers raised their last offer, so that many employees were voting on an offer which had been superseded. Furthermore, before the balloting was completed the employers revoked all offers. Moreover, one union, the International Longshoremen's Union, CIO, ordered its members to boycott the last offer ballot, and not one member of the union voted. Because it was necessary to wait several days for the return of the ballots sent to distant ports, the NLRB was not ready to certify the results to the Attorney General by the end of the 80-day period. Nevertheless, the Attorney General moved to dismiss the injunction and the injunction was discharged. The employees on the west coast went out on strike immediately thereafter, and the strike continued for several months.

East coast maritime

This was a new contract dispute between the International Longshoremen's Association, AFL, and the shipping companies on the east coast. The old contract was due to expire on August 21, 1948. The President appointed a board of inquiry on August 17, and directed it to submit its report on or before August 20. The board reported on August 18. On August 21, the district court for the southern district of New York enjoined the parties from engaging in any strike or lock-out, thereby averting a stoppage.

The dispute concerned primarily wage rates, and in the first instance at least was complicated by the overtime-on-overtime problem. The parties themselves resolved the overtime-on-overtime problem, but the question of a wage increase remained. On this question, the employees turned down the employers' last offer in a ballot conducted by the NLRB. The employers made another offer, which the negotiating committee for the union accepted. However, before this offer was ratified by the rank and file, the injunction expired. Thereafter, isolated strikes protesting the offer and its acceptance by the union's negotiating committee, spread rapidly. Within a few days all east-coast ports were closed, and the strike upon becoming general, was supported and led by the union leadership.

After the strike had lasted several weeks, the parties reached a settlement with the assistance of the Federal Mediation and Conciliation Service.

Court action

In five cases, the courts have held that an order restraining a strike under section 206–210 of the act is constitutional; that it is not a denial of free speech or due process and does not constitute involuntary servitude (*U. S.* v. *United Mine Workers*, 21 LRRM 2721 (District Ct. of D. C., Apr. 19, 1948); *U. S.* v. *National Maritime Union*, 22 LRRM 2275 (Dist. Ct., S. D. N. Y., June 24, 1948); *U. S.* v. *National Maritime Union*, 22 LRRM 2306 (Dist. Ct., N. D. Ohio, June 30, 1948); *U. S.* v. *International Longshoremen's Union*, 22 LRRM 2352 (Dist. Ct. N. D. Cal., July 2, 1948); and *U. S.* v. *International Longshoremen's Ass'n*, 22 LRRM 2421 (Dist. Ct., S. D. N. Y., Aug. 21, 1948)).

In *U. S.* v. *United Mine Workers*, supra, the court also held that (1) John L. Lewis and the United Mine Workers were guilty of criminal contempt for failing to comply with the order of the court restraining the strike in the coal industry; (2) a strike may be called by a nod, a wink, or a signal, and when such circumstances are present the court will not credit the argument that the stoppage was the result of the individual action of each member; and (3) as long as a union is functioning as a union it must be held responsible for the mass action of its members.

In the national emergency dispute involving the maritime industry on the east coast, west coast, and the Great Lakes, the Attorney General interpreted the emergency provisions of the act as requiring him to move for, and obtain, a dissolution of the injunction at the end of the 80-day injunction period, even though he had not received from the NLRB a certification of the results of the ballot taken on the employers' last offer. In that case, the Board was unable to make its report at the end of the 80 days because of the peculiar nature of the maritime industry. The Attorney General construed the provisions as requiring him to discharge the injunction without the report. (See 22 LRRM 259.)

Conclusions

There have been seven national emergency disputes with injunctions granted in the four maritime cases, atomic energy and coal. Obviously there has not been sufficient experience for evaluation of each of the respective steps that the act provides in such cases. Had the provisions been used to successfully prevent only one threat to the Nation's safety and health, they would have demonstrated their merit. They were used successfully in several cases. Therefore, in the committee's opinion the national emergency provisions must be retained.

The Director of the Federal Mediation and Conciliation Service has pointed out a phase of the emergency procedure which he considers to be a handicap to his efforts to mediate disputes. When a strike deadline has been set and he is convinced that the national health or safety will be affected, he must start the machinery for obtaining the injunction about a week before the strike date. This time is necessary for the appointment of the emergency board, its hearings, preparation of its report, and the Attorney General's application for an injunction. It has been the Director's experience that upon the appointment of the emergency board, the parties cease all efforts to reach a settlement and start preparing their case for the emergency board. That period just before the strike deadline, which has traditionally been one in which settlement is often reached, is therefore lost for conciliation efforts. If the act were amended to permit the President to direct the Attorney General to seek an injunction when upon the advice of the Director of the Mediation and Conciliation Service he is of the opinion that the threatened strike or lock-out will imperil the national health or safety, without the intervention of the emergency board, the Director's objection is met. The emergency board could then be called into existence upon the issuance of the injunction. This charge would not

affect the policies and purposes of the provisions and in the committee's opinion should be made.

In the cases so far, the vote upon the last offer has been of little value. It has presented great practical problems for the NLRB and in each instance the vote has been overwhelmingly against acceptance of the offer. Such result must be anticipated, for the calling of a strike of such magnitude as to invoke the national-emergency procedure will usually involve a strong union. The fact that not a single vote was cast in one of the west coast maritime referenda is illustrative. The committee recommends that sections 209 (b) and 210 be amended to eliminate the requirement for a ballot conducted by the NLRB on the last offer of the employer.

A further suggestion has been made that the emergency board be permitted to make recommendations as well as find the facts in these disputes. That alternative to the act's procedure was considered at length by the committees who drafted the act, and rejected by them as being in fact compulsory arbitration with public opinion providing the compulsion. The committee does not believe, in view of the success of the present procedure, that any case has been made for the adoption of that which was rejected by the committees who framed the law.

Injunctions

If "the era of government by injunction is being revived in labor disputes," the committee would be among the first to do something about it, for we are unanimous in not wanting to return to that period of our history which preceded the enactment of the Norris-LaGuardia Act in 1932. Since such statement has frequently been made by labor leaders, was made in a minority report of this committee last March, and has been asserted by officials of the executive department, we have painstakingly reviewed every case in which an injunction has been sought.

Injunctions may be issued pursuant to three different provisions of the statute. Section 10 (j) gives the Board discretionary power to seek appropriate temporary relief, or a restraining order, upon its issuance of a complaint charging that any person has committed an unfair labor practice. Under the Wagner Act, the Board had such power only after it had found an unfair labor practice to have been committed and had petitioned the United States court of appeals for enforcement of its order. The new section merely accelerated the time in which such relief might be sought.

Section 10 (l) requires the Board to seek injunctive relief in secondary-boycott cases when there is reasonable cause to believe the charge is true and that a complaint will issue.

Section 208 (national emergencies) authorizes such relief upon the petition of the Attorney General when a strike or lock-out is one which affects an entire industry or substantial part thereof, and if permitted to continue will imperil the national health or safety.

Injunctions under section 10 (j)

Anticipating many requests by charging parties that he seek injunctive relief under section 10 (j), the general counsel early determined that such action would only be taken in cases where continuation of the alleged violation would so vitally affect the public welfare that relief could not await the normal Board processes. Such policy was expressed to the field offices in the following instruction:

> In extraordinary circumstances, the general counsel may in advance of the Board's final decision secure an injunction under section 10 (j) of the act to restrain the practices charged. In these situations, however, it must appear that the alleged violations are of such nature and so vitally affect the public welfare, that relief cannot await the normal Board processes. We do not believe that merely financial or other injury that private parties must endure because of delays incident to all normal litigation justify, in and of themselves, substitution of the injunctive procedures of the district courts for the orthodox procedures of the Board and the circuit courts of appeals.

The committee believes that the general counsel was carrying out congressional intent in adopting this policy and commends his action in that respect.

While considerable pressure has been brought upon the general counsel by both labor organizations and employers to use section 10 (j) in their cases, injunctions have only been sought in six cases. Those cases are listed below showing with respect to each the identity of the respondent, the public interest involved, and the action taken.

1. *Madden* v. *United Mine Workers* ((D. C. D. C.) 79 F. Supp. 616).
   Violation: Section 8 (b) (1), (B), and (3).
   Public interest: Termination of coal strike.
   Action: Injunction granted.
2. *Curry* v. *United Mine Workers* (D. C. D. C.)
   Violation: Section 8 (b) (1) (A), (2), and (3).
   Public interest: Termination of captive coal mines strike.
   Action: Strike called off; petition dismissed with prejudice.
3. *Evans* v. *International Typographical Union* (D. C. S. D. Ind.) 79 F. Supp. 616).
   Violation: Section 8 (b) (1) (A), (1) (B), (2), and (6).
   Public Interest: Cessation of strikes, slow-downs in newspaper industry; relief against union's unlawful demand for a closed shop in large and important segment of Nation's economy.
   Action: Injunction granted.
4. *Graham* v. *Boeing Airplane Co.* ((D. C. W. D. Wash.) 22 LRRM 2243).
   Violation: Section 8 (a) (1) and (5).
   Public interest: Termination of strike in airplane plant affecting economy of entire city of Seattle and Government's rearmament program.
   Action: Petition denied.
5. *Le Baron* v. *Amalgamated Meat Cutters, etc.*
   Violation: Section 8 (b) (1) (A), (2), and (3).
   Public interest: Termination of strike involving 40 stores; injunctive relief sought to stem widespread unlawful demands for closed shop by unions in California.
   Action: Dismissed by agreement.
6. *Bowen* v. *General Motors Corp.* (D. C. S. D. N. Y.)
   Violation: Section 8 (a) (1) and (5).
   Public interest: Avoidance of threatened strike in automobile industry arising from employer's intent to set up insurance plan unilaterally.
   Action: Temporary restraining order granted and continued by agreement of parties pending Board decision.

INJUNCTIONS UNDER SECTION 10 (1)

In our March 15, 1948, report, we stated that a total of 132 charges alleging secondary boycotts under the act had been filed between August 22, 1947, and February 1, 1948. During such period the Board filed petitions for injunctions pursuant to section 10 (1) in 9 of the 132 cases; 55 of the charges were withdrawn, adjusted, or dismissed in the regional offices; the report attempted to discuss the relevant facts of the 9 cases in which injunctions had been sought.

During the period February 1, 1948, to November 1, 1948, 210 charges alleging secondary boycotts under the act have been filed, 22 petitions for injunctions have been filed in the courts, and 255 cases have been dismissed, withdrawn, or adjusted at the regional-office level.

A summary of the types of boycotts which have been litigated showing with respect to each the name of the case, and the action taken by the court, is set out below.

A. Involving 8 (b) (4) (A) or (B)

1. Refusal by strike of Albany longshoremen to load or unload vessels, or operate tugs, for employers not connected with the dispute, to require motor-carrier operators to cease shipping trailers over the road and to compel such operators to ship trailers via boat.

Douds v. ILA (20 LRRM 2642). Action: Temporary restraining order obtained, strike settled and proceeding discontinued.

2. Strike by employees of a motor carrier to compel said motor carrier to cease leasing truck and trailer equipment to another motor carrier who did not employ members of striking union.

Douds v. *Teamsters (Conway)* (75 F. Supp. 414). Action: Injunction granted.

3. Strike among employees of department store and picketing of store to force the store to cease doing business with a contractor with whom the union had a dispute. Disciplinary control over members shown.

Barker v. *Carpenters* (21 LRRM 2406). Action: Injunction granted.

4. Union inducement of strike without formally calling same to force employer to cancel contract with nonunion contractor.

Styles v. *I. B. E. W.* (22 LRRM 2446). Action: Injunction granted.

5. Refusal by a union to permit its members, employees of wholesale liquor distributors, to handle products of a distiller with which an affiliated union had a dispute.

Douds v. *Distillery Workers* (75 F. Supp. 184). Action: Temporary restraining order obtained, dispute settled and injunction denied as unnecessary.

6. Concerted refusal by union to furnish men to employers handling preglazed articles, and union inducement of members not to work for employers handling preglazed articles by rules and regulations providing penalties for such in order to force employers to cease using the preglazed products manufactured by other persons.

Bott v. *Glaziers*. Action: Pending.

7. Oral inducement of employees of other employers to refuse to handle freight of motor carrier with whom the union had labor dispute.

Douds v. *Teamsters (Conway)*, ibid.

8. Union ordered its members to stop work on a house to compel the cancellation of agreement with store for installation of floor covering by nonunion employees.

Styles v. *Carpenters* (74 F. Supp. 499). Action: Injunction denied.

9. Instructions by union to its members employed by telegraph company to refuse to handle messages for cable companies whose employees, members of the union, were on strike.

Douds v. *A. C.* Action: Settled and withdrawn.

10. Instructions by union to its members employed by other employers to refuse to handle freight of company with which union had a dispute.

Douds v. *Teamsters (Montgomery Ward)* (75 F. Supp. 418.) Action: Injunction granted.

11. Inducing employees of subcontractor to refuse to work on job of an "unfair" general contractor, by instructions, an "unfair list," and union discipline.

Cranefield v. *Building Trades Council* (78 F. Supp. 611). Action: Injunction granted.

12. Union inducement of members employed by company manufacturing dies not to work on dies for charging party in order to compel die manufacturer to cease doing business with charging party.

Douds v. *Mine, Mill & Smelter Workers*. Action: Violation discontinued, but case retained on court docket.

13. Threats of violence, road blocks, and mass picketing to induce construction-company employees to refuse to work on a construction job at mine to force mine owner to recognize union.

Evans v. *Mine Workers*. Action: Proceeding discontinued upon employer's cessation of business and withdrawal of charge.

14. Coercion and physical assault of railroad employees by oil-workers union, to induce railroad employees to refuse to handle shipments to and from struck oil refineries to force railroads to cease doing business with struck refineries.

Brown v. *Oil Workers*. Action: Pending.

15. Mass and other picketing of drydocks to induce drydock workers to refuse to work on ships of struck employers in order to force drydocks to cease doing business with struck employers.

LeBus v. *Marine Cooks and Firemen*. Action: Pending.

16. Picketing construction site of prefabricated homes and publishing "We do not patronize" list to force contractor to cease purchasing prefabricated houses from manufacturer with whom union had a dispute. Disciplinary control of picketing union over employees shown.

Sperry v. *Carpenters* (21 LRRM 2244). Action: Injunction granted, appealed.

17. Picketing trucks and freight cars containing "hot goods" (goods of struck company) to induce employees of trucking and terminal companies to refuse to handle products of struck company. Disciplinary control of picketing union over employees induced not shown.

LeBaron v. *Printing Specialty* (75 F. Supp. 678). Action: Injunction granted, appealed.

18. Picketing of construction site by building trades council as a signal to all members of unions affiliated with council employed by various contractors on the job to strike to force cessation of business with a subcontractor with whom only one of the affiliated unions has a dispute.

Sperry v. *Building Trades Council* (*Gould & Preisner*) (77 F. Supp. 321). Action: Injunction denied.

19. Picketing of railroad tracks and public loading platform and threats of railroad employees by a teamsters union to induce railroad employees and others to refuse to handle freight of rice-milling companies with whom teamsters had a dispute.

LeBus v. *Teamsters*. Action: Injunction granted by consent.

20. Picketing of customers of charging party and threats of discipline to customers' employees to induce them not to handle products of charging party.

LeBaron v. *Farm Labor Union* (22 LRRM 1377). Action: Injunction granted.

Douds v. *Teamsters and Retail Clerks* (*Philan*). Action: Injunction granted by consent.

Douds v. *Teamsters* (*Schultz*). Action · Injunction granted.

21. Picketing of job site on which nonunion subcontractor employed to induce employees of other subcontractors to strike solely to force cancellation of nonunion subcontractors' contract.

Douds v. *I. B. E. W.* Action: Injunction granted by consent.

Shore v. *Building Trades Council*. Action: Injunction granted.

22. Picketing of gate of struck plant used exclusively by employees of contractor erecting addition to struck plant to force contractor to cease doing business with struck employer.

Evans v. *U. E.* (22 LRRM 2459). Action: Injunction granted.

23. Picketing by Building Trades Council of place of business of employer with whom union affiliated with council had dispute for purpose of inducing employees of other employers, by reason of fear of disciplinary action, to refuse to make deliveries to picketed employer.

Sperry v. *Building Trades Council* (*Steele*). Action: Injunction denied.

24. Picketing of dock owned by struck employer but leased to charging party to induce charging party's employees to refuse to work in order to force discontinuance of leasing arrangement.

Findlay v. *Oil Workers*. Action: Dispute temporarily adjusted by parties, case retained on docket.

25. Picketing stores using delivery service to induce employees of stores not to work in order to force stores to cease using the delivery service.

Douds v. *Teamsters* (*Howland Dry Goods, etc.*). Action: Violation discontinued, case retained on docket.

26. Use of "unfair" list to induce employees of employers to refuse to work with another employer.

Sperry v. *Carpenters* (21 LRRM 2244). Action: Injunction granted.

Cranefield v. *Building Trades Council* (78 F. Supp. 611). Action: Injunction granted.

Sperry v. *Building Trades Council* (*Gould & Preisner*) (77 F. Supp. 321). Action: Injunction denied.

Slater v. *Building Trades Council*. Action: Injunction denied.

27. *Douds* v. *Metropolitan Architects* (21 LRRM 2256). Action: Injunction denied. For discussion of case, see page 18 of committee's March 15 report.

B. Involving 8 (b) (4) (c)

28. Picketing by noncomplying union, not permitted on ballot, to force department store to recognize it when another union had been certified in a consent election as the representative of the employees claimed by the picketing union.

Douds v. *Department Store Employees*. Action: Injunction granted, appealed, affirmed.

29. Instructions by IATSE to union members, employees of a theater and of another employer, not to perform services for their employers in connection with a television broadcast being arranged by charging party (the broadcasting company) to force charging party to give work to IATSE members which under a certification of the Board (issued several years previously but still recognized by the parties and not questioned by claims of any other union) belonged to another union.

Douds v. *IATSE*. Action: Temporary restraining order continued by consent.

In summary, the Board has sought injunctions in 31 cases under section 10 (1) involving various forms of the secondary boycott restrictions of section 8 (b) (4) (A), (B), and (C). Injunctions were granted by the court in 15 of the 31 cases, denied in 4, and 5 still pending, and 7 disposed of by action of the parties.

In its March 15 report the committee stated, "Board officials state that it is becoming a usual occurrence for an employer to file a charge of secondary boycott and request its withdrawal within a few days. In some cases, such charges have been withdrawn before Board employees had an opportunity to investigate. The mere filing of a charge and the beginning of an investigation is serving to stop the secondary boycotts." The committee is happy to report now that such favorable trend has continued. Further, there has been a substantial reduction in the number of charges being filed in which a violation of section 8 (b) (4) is alleged.

INJUNCTIONS UNDER SECTION 208 (NATIONAL EMERGENCIES)

The committee's recommendations with respect to amendments to the national emergencies sections are treated elsewhere in this report. Injunctions have been sought by the Attorney General at the direction of the President in six instances and in each instance the injunction was granted. The six cases were as follows:

1. *U. S.* v. *Carbide and Carbon Chemicals Corporation, et al.*, United States District Court, Eastern District of Tennessee—Civil Docket No. 1093; March 19, 1948.

2. *U. S.* v. *International Union, United Mines Workers of America, et al.*, United States District Court for the District of Columbia—Civil Action No. 1379–48; April 21, 1948.

3. *U. S.* v. *International Longshoremen's Association* (*AFL*), *et al.*, United States District Court for Southern District of New York—Civil Action No. 47–157; August 25, 1948.

West Coast

4. *U. S.* v. *ILWU, Waterfront Employers Association of the Pacific Coast, Pacific American Shipowners Association, et al.*, United States District Court for Northern District of California—Civil Action No. —; June 14, 1948.

East Coast

5. *U. S.* v. *NMU, et al.*, United States District Court Southern District of New York—Civil Action No. 46–299; June 23, 1948.

Great Lakes

6. *U. S.* v. *NMU, et al.*, United States District Court for the Northern District of Ohio—Civil Action No. —; June 14, 1948.

Nos. 4, 5, and 6 above were obtained after the report of the board of inquiry was appointed by the President under Executive Order No. 9964, dated June 3, 1948, to investigate maritime disputes on both coasts and the Great Lakes.

The record on injunctions sought and obtained completely refutes the statement that the era of government by injunction has been revived in labor disputes. Injunctions have been granted in 3 cases pursuant to section 10 (j), in 15 cases pursuant to section 10 (l) and in 6 cases pursuant to section 208.

Favorable Strike Picture

The Bureau of Labor Statistics has supplied the following month-to-month information on the number of strikes occurring during 1947 and for the first 8 months of 1948:

1947	Number of strikes	Man-days idle	1948 [1]	Number of strikes	Man-days idle
January	321	1,340,000	January	175	1,000,000
February	296	1,230,000	February	200	725,000
March	361	1,100,000	March	225	6,000,000
April	479	8,540,000	April	275	8,000,000
May	471	6,730,000	May	275	4,100,000
June	379	3,960,000	June	310	2,000,000
July	315	3,970,000	July	335	2,200,000
August	336	2,520,000	August	335	1,750,000
September	219	1,970,000			
October	219	1,780,000			
November	178	829,000			
December	119	590,000			

[1] Preliminary estimate subject to revision.

No break-down is available to show the issues in the strikes listed above, and without it any assessment of the value of the act in preventing strikes can be only speculative. Sufficient time has passed, however, to clearly establish as completely unfounded the prediction that the law would substantially increase strikes. The statistics show a general decline in both the number of strikes and man-days idle since passage of the act. For the first 8 months of 1947, that period immediately preceding passage of the act, there were 2,958 strikes, with 29,390,000 man-days idle, and in 1948, for the same period, there were 2,130 strikes, which involved the loss of 25,775,000 man-days. It should also be noted that there was a marked and steady decline in both strikes and man-days lost in the 5 months of 1947 following the passage of the act, the number of man-days lost dropping from 3,970,000 in July 1947, to 590,000 in December of that year.

We have pointed out the act's effectiveness in the prevention of jurisdictional strikes, strikes in support of secondary boycotts, and "wildcat" strikes. The 60-day notice requirements and the general balancing of the rights of employers and employees provided in the act have also played a part in reducing the number of strikes.

Union Gains

The Bureau of Labor Statistics has supplied the following figures showing the average hourly earnings of industrial employees for 1947 and the first 9 months of 1948:

1947	Rate	1948	Rate
January	$1.161	January	$1.285
February	1.170	February	1.287
March	1.180	March	1.289
April	1.186	April	1.292
May	1.207	May	1.301
June	1.226	June	1.316
July	1.230	July	1.333
August	1.236	August	1.349
September	1.249	September	1.363
October	1.258		
November	1.268		
December	1.279		

While the above table shows that wages have steadily advanced, the average worker has gained much more by virtue of the fact that he has participated in fewer strikes.

Increase in union membership since passage of the act has been constant. A few unions have lost a substantial block of their membership to other unions when the issue of the failure of their leadership to file non-Communist affidavits has been raised against them. Many of the larger unions, such as the United Automobile, Aircraft, and Agricultural Implement Workers of America, CIO, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL, and the International Association of Machinists, Ind., reported substantial gains by 1948. The teamsters, for example, announced a record total of 1,060,000 members as of January 1948. The United Auto Workers, CIO, which experienced real losses due to shutdown of wartime industries, again approached its wartime peak of about 1,000,000. The largest of the independent or unaffiliated unions, the machinists, climbed to a new peak of 625,000. Few unions, according to all available reports, experienced more than temporary membership losses from 1945 to 1948.

The act has helped unions by making them more responsible. Many have met the accusation that they were controlled by Communists by pointing out the fact that all their officers had signed the non-Communist affidavit. While most labor organizations already informed their membership as to their financial affairs, the filing requirements

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have given their reports the added authenticity that goes with their filing with a department of the Federal Government. Participation in union welfare funds was enjoyed by over 3,000,000 members by mid-1948, which is more than twice the number covered in early 1947. The requirements of the law, which are calculated to guarantee the benefits of such funds to the employees for whom they were created, have unquestionably played a part in this increase.

Unfair Labor Practice Charges

Much publicity has been given to the act's restrictions on unfair labor practices of unions. Little attention has been paid to the fact that the Wagner Act's prohibitions still apply to the employer in his relations with his employees. Employers must bargain in good faith with the union which is the choice of the majority of his employees in an appropriate unit; he may not discharge or otherwise discriminate against an employee for the purpose of discouraging or encouraging membership in a union; he may not form or dominate a union of his employees; and he is prohibited from restraining or coercing his employees in their right to freely choose their representative.

Board statistics on complaint cases filed since the passage of the act demonstate clearly that the majority of its time will continue to be spent in preventing employer unfair labor practices. Board records on unfair labor practice charges filed since the effective date of the act show:

	Charges filed against employers	Charges filed against unions		Charges filed against employers	Charges filed against unions
1947—September	336	73	1948—June	243	80
October	351	91	July	241	80
November	197	59	August	276	97
December	180	61	September	[1] 453	108
1948—January	252	71	October	297	76
February	232	71	November	316	78
March	322	95			
April	246	69	15-month total	4,136	1,188
May	194	79			

[1] Includes 210 cases filed by a single individual against insurance companies.

Only 660 of the 1,188 charges filed against unions were filed by employers. The remainder were filed by individual employees and other unions.

Suits by Private Parties Under Sections 301 or 303 of the Act

Section 301 of the act provides that suits for violations of contracts between employers and labor organizations may be brought in the district courts and that labor organizations may sue and be sued as entities. Section 303 authorizes suits for damages sustained because of illegal secondary boycotts, jurisdictional strikes, or strikes to force an employer to bargain with the striking union when another union has been certified as the bargaining representative. It is specifically provided that any money judgment against a labor organization is enforceable only against the assets of the organization and shall not be enforceable against any individual member or his assets.

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It should be pointed out that labor organizations might sue and be sued as an entity in many State courts. In others each individual member of the union must be named and made a party to the suit. There has been little uniformity among the various States in the procedure for collection of a judgment once it is rendered. The act merely opened the Federal courts to permit uniformity in the enforcement of collective-bargaining agreements.

Because it was frequently predicted that these sections would subject labor organizations to a multiplicity of suits with resultant drains on their treasuries, the committee has made a painstaking effort to keep itself informed on all pending litigation. We have communicated from time to time with the clerks of all the United States district courts, requested copies of all formal papers of the litigants, and studied all reported court decisions. Our findings refute all of the unfavorable predictions.

Since the effective date of the act a total of approximately 57 suits has been brought under sections 301 and 303 in all of the United States; 37 were brought by employers against unions, 19 by unions against employers, and 1 by an employee against an employer.

We have discovered no case to date in which either an employer or a union recovered damages from the other.

Fifteen of the employer suits against unions were dismissed by agreement of the parties, 5 were dismissed by the court, and 16 are still pending. In the remaining case the employer secured the setting aside of an arbitrator's award. It is quite probable that a substantial number of the 16 cases still pending on the courts' dockets have been discontinued by the parties but not yet on the record.

Six of the union suits against employers have been dismissed by agreement, four by the court, six are still pending, and the committee has not yet been informed as to the disposition of two cases. In the one remaining case the union sought and the court granted an injunction restraining the employer's breach of contract. The court action in this case is completely contrary to that of all other courts which have on similar facts denied injunctions to private parties.

Whether instituted by employers or unions, the great majority of these suits have been brought under section 301, seeking damages for breaches of collective-bargaining agreements. In many cases a strike has been involved. In the typical case the strike is settled and the suit is dismissed by agreement of the parties. The committee believes that the suits reported to date show that neither party desires to recover money damages from the other, but that the very presence of this remedy has encouraged employees and unions alike to act with a deeper sense of responsibility. In support of this, statistics of the Ford Motor Co. show that man-days lost at its plants because of wildcat stoppages dropped 90 percent during the first 8 months of 1948 as compared to the same period in 1947.

Charges of secondary boycotts or other violations of section 303 figured in only 12 of the 57 cases reported. Many of these were settled by agreement of the parties, and in none did the plaintiff recover damages. The small number of these cases plus the relatively small number of complaints filed with the NLRB charging violations of corresponding section 8 (b) (4) indicate that the most pronounced effect of the two sections has been restraint.

Court rulings under sections 301 and 303

Injunctions.—Neither section 301 nor 303 has removed the limitations of the Norris-LaGuardia Act upon the power of the district court to issue injunctions in labor disputes. Accordingly, neither an employer nor a union may obtain an injunction in a labor dispute under 301 or 303. (See *Bakery Sales Drivers Union* v. *Wagshal*, 333 U. S. 437 (1948); *Amalgamated Ass'n* v. *Dixie Motor Coach*, 23 LRRM 2092 (U. S. C. A. 8th, 1948); *Alcoa Steamship Co.* v. *McMahon*, 23 LRRM 2051 (Dist Ct. S. D. N. Y., 1948); *Packinghouse Workers* v. *Wilson & Co.*, 22 LRRM 2051 (Dist. Ct. S. D. N. Y., 1948); *Gerry* v. *Superior Court*, 22 LRRM 2279 (Cal. Sup. Ct., 1948).)

In *Communications Workers* v. *Telephone Co.* (22 LRRM 2495 (Dist. Ct. D. Colo., 1948)) the court, ruling to the contrary, granted the petitioning union an injunction restraining the employer from a breach of the collective-bargaining agreement. The court held that an unfair labor practice under the NLRA was not involved, and that the dispute between the parties was not a "labor dispute" as defined in the Norris-LaGuardia Act.

Unfair labor practices.—The courts have held that a private party filing suit in the district court is not entitled to an injunction restraining an unfair labor practice, for the same reason as stated above in connection with injunctions and for the additional reason that the power of the NLRB to remedy unfair labor practices is exclusive. (See *Amazon Cotton Mill* v. *Textile Workers*, 21 LRRM 2605 (U. S. C. A. 4th, 1948); *Amalgamated Ass'n* v. *Dixie Motor Coach*, supra; *International Longshoremen's Union* v. *Sunset Line & Twine*, 21 LRRM 2635 (Dist Ct. N. D. Cal., 1948); *Bakery & Confectionery Workers* v. *National Biscuit Co.*, 22 LRRM 2304 (Dist. Ct. E. D. Penn., 1948).

Constitutionality.—The subjection of secondary boycotts to suits for damages by section 303 is not unconstitutional on its face as an abridgement of the right of free speech. Nor is the application of section 301 to contracts executed before its enactment unconstitutional. (See *Colonial Hardward Flooring* v. *Furniture Workers*, 76 F. Supp. 493, aff'd 168 F. 2d 33 (U. S. C. A. 4th, 1948).)

Miscellaneous.—In the Colonial Hardwood Flooring case, the court also held that it was not necessary under the terms of the collective-bargaining agreement for the employer to resort to arbitration before bringing his suit under 301 and 303; that although the union's headquarters were in New York the district court in Baltimore had jurisdiction in view of the venue provisions of section 301 (c) allowing suit in any district in which the union's duly authorized officers or agents are engaged in representing employee members; and that an employer may join an action for damages under section 301 with an action based on a secondary boycott under 303. In another case involving an action by an employee against an employer for reinstatement under the provisions of the act, the court granted the defendant's motion to dismiss because the union had not been joined as a party defendant (*Slade* v. *Sun Shipbuilding Co.*, 23 LRRM 2054 (Dist. Ct. E. D. Pa., 1948)).

Compilation of Collective-Bargaining Agreements

Under the terms of section 211 of the act, the Bureau of Labor Statistics is directed to maintain copies of all available collective-bargaining agreements, to make such file open to public inspection, and to furnish upon request "all available data and factual information which may aid in the settlement of any labor dispute."

During 1948 the Bureau received, on the average, over 1,000 new agreements each month. The total number of agreements on file at the year's end approximated 15,000, all of which were in effect during all or part of 1948. These agreements, although representing but a fraction of the 100,000 or more agreements estimated to be in existence in the United States, nevertheless included from the standpoint of coverage the great majority of all workers employed under the terms of labor-management contracts.

Many employers now submit copies of their agreements as soon as revised or amended. In most instances, however, the Bureau must solicit agreements through a written request. Copies of agreements affecting large or significant groups of workers, or industries, are requested as soon as negotiated. The Bureau has also laid particular stress on the procurement of agreements relating to industries and unions heretofore not adequately represented in the Bureau's sample. The result has been a substantial enlargement in the total number of current agreements on file, with a wider representation of all types of industrial enterprise.

All incoming agreements are indexed and, with the exception of those submitted in confidence, are made available for public inspection. Requests for the inspection of agreements on file have steadily increased throughout the year. In some instances as many as several hundred agreements have been made available in the Bureau's offices to those who have utilized the opportunity to examine agreements in connection with their work in labor-management relations. Many written requests for information on specific contract provisions are also received from employers, unions, governmental agencies, universities, and other public and private parties. The agreement file is constantly consulted in preparing replies to these inquiries, which have averaged about 200 a month.

The agreements constitute a basic source of much of the data compiled by the Bureau in the field of industrial relations. Their various provisions are analyzed and coded in detail for use in connection with reports on collective-bargaining trends and practices. Each new agreement is examined, for example, for provisions relating to the establishment of health, welfare, and retirement programs. Thousands of sample clauses have been selected from agreements for analysis in the Bureau's published series, Collective Bargaining Provisions.

The committee is persuaded that the compilation and assembly of labor-management contracts in a central agency in the Department of Labor, as provided for in the act, has demonstrated its value and merit. As it has been developed and expanded, this collection of contracts affords a beneficial and well worth-while service for labor organizations, employers, and the public.

As an authoritative source of information, the contracts on file may be consulted in the interests of standardizing the scope and provisions of wage contracts and of bringing into general usage provisions and procedures that are deemed desirable.

Registration of Labor Organizations

As a condition precedent to its use of the services of the National Labor Relations Board, a labor organization and its parent international must file the financial and other information concerning the conduct of its affairs required by section 9 (f) of the act. The Secretary of Labor, with whom such information is required to be filed, has established a new office within the Department of Labor known as the Office for the Registration of Labor Organizations.

To facilitate the required filings, the new Office has prepared a form which is mailed to unions upon their request. Proper completion of the form furnishes all the information required by the act. While the form does not appear to be difficult to complete, many of the earlier ones that were sent in had to be returned to the unions for further information.

As of February 1, 1948, a total of 10,796 labor organizations had filed the required statements. On November 12, 1948, a total of 18,614 labor organizations had filed the required information with the Department of Labor. Seventy-two percent of the unions filing on the latter date are affiliated with the American Federation of Labor, 14 percent with the Congress of Industrial Organizations, and 14 percent are independent unions.

There are 105 national and international unions affiliated with the American Federation of Labor, and of these, 81 have registered; 32 of the 39 internationals affiliated with the Congress of Industrial Organizations have registered, as have 32 independent national and international unions.

As a part of its duty to study the internal organization and administration of labor organizations, the committee has made a preliminary examination of the material that has been filed to date. A few general observations may be of interest at this time. The net worth of the parent international labor organizations who have filed to date ranges from a high of $14,500,000 to a low of $14,500. Initiation fees vary from $1 to more than $100. The great majority of union members pay dues of about $1.50 per month. The average international president is paid a salary of $10,000 a year, including expenses. A few received in excess of $25,000 per year, and at least one is paid no salary, receiving only an expense allowance. Constitutions of the international unions give their constituent locals wide discretion in fixing such fees.

Unquestionably the filing of financial statements of labor unions with the Secretary of Labor, covering receipts and expenditures, reserves, and other sums of the unions, has been productive of improved and standardized practices in accounting for such funds and put added emphasis on the responsibility of union officers for their safekeeping. The statements, as filed with the Secretary of Labor, must set forth the manner in which the accounting is made known to the membership of the union.

The Secretary of Labor is to be commended for the development of a practical and standardized form for the accounting. The committee believes this service should be continued without change, and that unions should be encouraged to adopt a standard fiscal year as far as may be feasible.

The Non-Communist Affidavit

The interpretation of the non-Communist affidavit requirement of the act and the setting up of the machinery to facilitate compliance with this requirement by labor organizations were among the first important problems facing the administrators of the new law. Section 9 (h) requires officers of labor organizations which desire to avail themselves of the Board's facilities to file with the Board affidavits attesting that they are not members of the Communist Party "or affiliated with such party" and that they do not believe in, and are not members of, or support, any organization that "believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional means." The provision prohibits the Board from issuing complaints on behalf of any organization whose officers have not complied with this requirement, or from making any investigation concerning the representation of employees at the request of a noncomplying organization.

Closely related to this requirement is section 9 (f) and (g) of the act, which necessitates, as a condition precedent to processing Board cases, the filing by unions of registration and financial statements with the United States Department of Labor.

Despite the protests by many union leaders and officials against the act, and against the filing requirements, accompanied by a threat of concerted refusal to file affidavits and registration statements, it is to be noted that no such boycott of the National Labor Relations Board and of the procedures of the law has ensued. Officers of a large majority of labor organizations have complied with the filing requirements. In many instances, unions have taken decisive action to compel reluctant officers to comply with the filing requirements. Refusal by incumbent officers to make the affidavit has been an issue in a number of union elections which resulted in such officers being denied reelection. One large international union amended its constitution to require all of its officers to make the non-Communist oath. There has been considerable evidence of membership dissatisfaction with the policy of those unions who have sought to boycott the processes of the Board. Other unions whose officers have complied have had marked success in NLRB representation elections whereby they have supplanted the noncomplying union. It has already been fairly well demonstrated that the American workingman will take steps to rid his union of communistic leadership when the character of that leadership has been identified to his satisfaction.

On September 27, 1948, the Atomic Energy Commission directed one of its contractors, the General Electric Co., not to recognize the United Electrical, Radio, and Machine Workers, UE-CIO, as the bargaining representative of its employees at the New Knolls Atomic Power Laboratory, Schenectady, N. Y. The Commission justified its action upon information concerning alleged Communist affiliation or

association of various officers of UE, and the failure of such officers to file non-Communist affidavits under the act.

On the same date, the Atomic Energy Commission also directed the University of Chicago to refrain from recognition of the United Public Workers of America, CIO, at the Argonne National Laboratory in Chicago. Again the Commission justified its action upon general information and failure of the union officers to make the non-Communist oath. The Commission stated that some of the suspected officers were in positions where they exercise administrative, negotiating, or disciplinary authority over the local union active at the contractor's plant. The committee commends the action of the Atomic Energy Commission. In an industry so vital to our national security, it is imperative that every precaution be taken, not only that the employees themselves be loyal beyond reasonable doubt but also that they not be subject to the disciplinary authority of men whose loyalty may be seriously questioned. Union membership does and should involve a close association between the rank-and-file member and the leaders of his union.

The National Labor Relations Board reported that, as of November 1, 1948, 176 international and national unions had complied with the non-Communist affidavit requirement. Included among these were 95 of the AFL's 105 internationals, and 31 of the CIO's 39 international or national organizations. In addition, there were 50 unaffiliated labor organizations which had complied.

The committee is pleased to note that there has been an increase in the number of international and national unions in compliance since our March 15 report, and hopes that all labor organizations in the United States will take all steps necessary to avail themselves of the benefits and peaceful procedures offered by the law.

Board decisions respecting the affidavit requirement

At the outset, the general counsel had ruled that these affidavits must be made by officers of the parent federations, the AFL and the CIO, as well as by the officers of national or international unions and their locals, if the locals were to avail themselves of the protections of the act. On October 7, 1947, the Board, in its first ruling on the applicability of the affidavit and registration requirements, held that where the local union involved and the national or international labor organizations to which it is directly affiliated had complied, the local union was in full compliance whether or not the parent AFL or CIO had met the requirements.

The issue was presented to the National Labor Relations Board in the case of *Northern Virginia Broadcasters, Inc.* (75 N. L. R. B. No. 2). Local 1215 of the International Brotherhood of Electrical Workers, AFL, had filed a petition for a collective-bargaining election. Both local 1215 and the International Brotherhood of Electrical Workers had filed the required affidavits and had complied with the registration requirement. Pursuant, however, to the ruling of the general counsel, the regional director dismissed the petition because the officers of the parent AFL had not filed non-Communist affidavits and a registration statement. The union appealed to the Board to reverse the action of the regional director in dismissing the petition. The Board, acting on the appeal, in a divided opinion set aside the dismissal and reinstated the union's petition.

The majority opinion noted that, under the regional director's ruling, if any single officer of the AFL failed to comply, "not a single complying local or international union within that federation can derive any benefit from its own clean hands." The decision observed that to prohibit complying locals and complying national unions from invoking the jurisdiction of the Board for the reason that officers of the parent federation had failed to comply would detract from the fundamental purpose of this provision "to eliminate Communist influence from the labor movement of the United States." The majority also based its conclusion upon the meaning of the phrase "national or international labor organization" contained in section 9 (g) (h) of the act, stating that in ordinary labor parlance the term refers to labor organizations such as the International Brotherhood of Electrical Workers, rather than to parent federations such as the AFL or the CIO.

In a series of cases arising under the provisions of the old Wagner Act, the Board then proceeded to define the application of the provision to specific cases and facts as they presented themselves.

The *Marshall and Bruce Company case* (75 N. L. R. B. No. 13), decided October 24, 1947, involved a union charge that the employer had refused to bargain collectively in violation of section 8 (5) of the Wagner Act. The intermediate report of the trial examiner finding that the company had engaged in the unfair labor practice alleged and recommending remedial action, including an order requiring the employer to bargain with the union, had been issued on January 29, 1947. The charging union had not at the time of the Board's decision complied with the affidavit and registration requirements. A majority of the Board held that an order to an employer to bargain (as distinguished from an order based upon other unfair labor practices of the Wagner Act) should be conditioned upon the charging union's compliance with the new affidavit and registration requirements. The majority stated that an order to bargain collectively was tantamount to a certification and that it would not effectuate the congressional policy embodied in the new statute to aid the bargaining position, in a pre-Taft-Hartley case, of a union which failed to comply with the new requirements.

The *Pioneer Electric Company case* (75 N. L. R. B. No. 14), also decided on October 24, 1947, emphasized the distinction, insofar as the retroactive effect of the non-Communist affidavit and registration requirements were concerned, between an order requiring an employer to bargain collectively and orders based upon other unfair-labor-practice sections of the act. The case involved charges that the employer had discriminatorily discharged an employee in violation of section 8 (3) of the old act. The trial examiner had upheld these charges and recommended that the employer cease interfering with the rights of his employees and that he reinstate, with back pay, the employee found to have been discriminatorily discharged. Here again at the time of the Board's decision, the charging union was not in compliance. The Board issued an order unconditionally requiring the employer to remedy the unfair labor practices which had been found. In the subsequent *Plankinton Packing Company case* (75 N. L. R. B. No. 32), decided November 19, 1947, the Board reiterated its ruling that it would not compel an employer to bargain collectively with a union which had not complied with the filing requirements.

In a series of cases, the Board proceeded to mark out the application of the filing requirement provisions of the act to its election procedure. In the *Kinsman Transit Co. case* (75 N. L. R. B No. 16), decided October 27, 1947, although the Board permitted the National Maritime Union of America, CIO, a noncomplying labor organization, to intervene at the hearing on the petition for a collective-bargaining election initiated by the Seafarers' International Union of North America, AFL, a complying union, it ruled that the noncomplying intervenor would not be permitted to have its name appear on the ballot unless it complied by November 1, with the affidavit and registration requirements.

In *Rite-Form Corset Company, Inc.* (75 N. L. R. B. No. 19), decided November 4, 1947, the petition had been filed prior to the effective date of the Taft-Hartley Act by the steel workers' union, CIO. This union had not complied with the affidavit and registration requirements of the act. In view of the union's failure to file the appropriate affidavits and information, or to take any steps to comply with the relevant requirements, the Board declined to act on the petition and dismissed the case.

The *Wilson Transit Company case* (75 N. L. R. B. No. 21), decided November 6, 1947, involved a petition for a bargaining election filed by a complying union. The National Maritime Union, CIO, an intervenor and noncomplying union, was not accorded a place on the ballot.

In the *Sigmund Cohn Mfg. Co. case* (75 N. L. R. B. No. 20), decided November 6, 1947, the Board refused to place the Wholesale and Warehouse Union, local 65, a noncomplying organization, on the ballot with an IAM petitioner, despite the fact that in this instance local 65 had, for some time, held a bargaining contract with the company.

In the *Myrtle Desk Company case* (75 N. L. R. B. No. 29), decided November 17, 1947, the Board refused to certify a noncomplying union which had won a run-off election before the Taft-Hartley law went into effect. The certification was the sole step remaining in this case to complete the investigation of representation. The Board stated that section 9 (f) (g) (h) of the act precluded from investigation any step in its determination of the question concerning representation raised by a labor organization unless the union had completed the filing requirements. The Board rejected the contention that certification is merely a ministerial action and does not require the exercise of judgment or discretion.

The *Consolidated Vultee Aircraft Corporation (National Division) case* (dismissal order dated November 19, 1947) (case No. 10–R–2546) furnishes the most spectacular example of the rule prohibiting the certification of noncomplying unions. In this case, the Steelworkers of America, CIO, had, on August 20, 1947, 2 days before the effective date of the act, won an election against International Association of Machinists by a vote of 903 to 464. In accordance with its earlier determination that the act of certification is part of the process of investigation prohibited in the case of noncomplying unions, the Board refused to certify the steelworkers' union, despite its substantial majority evidenced in the August 20 election.

In the *Monumental Life Insurance Company case* (75 N. L. R. B. No. 93) the petitioning union, which had not filed the necessary affidavits and registration statements, was competing with a complying intervenor for status to represent the company's employees. The results of a prehearing election held on June 13, 1947, prior to the effective date of the act, were inconclusive. On January 13, 1948, the Board dismissed the petition without holding a run-off election, for the reason that the petitioner had failed to comply with the filing requirements. The decision stated, however, that the petition was dismissed without prejudice to the right of the complying intervenor to file a petition in its own behalf.

In the *Hardwicke-Etter Co. case* (75 N. L. R. B. No. 119) the Board dismissed a representation proceeding initiated by a noncomplying union without considering objections to a preelection hearing, despite the fact that the intervening union had won the election by a substantial majority. Also see *In the Matter of American Packing Corporation and United Packinghouse Workers of America, CIO* (76 N. L. R. B. No. 3).

Similarly in the case of petitions filed by employers under section 9 (c) (1) (B), the Board has acted to prevent certification of a noncomplying union. Thus, in the *Herman Loewenstein, Inc., case* (75 N. L. R. B. No. 47) an employer filed a petition for a collective-bargaining election. The Board unanimously ruled that although the petition was filed by an employer, the question of representation was raised by a labor organization and that "although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery." Therefore, the Board concluded it was barred from investigating the claims of the noncomplying union, a local of the International Fur and Leather Workers Union, CIO. Since the fur-workers' union had not complied with section 9 (f), (g), and (h) of the act, the Board ordered that it be excluded from the ballot. Subsequently, on December 19, 1947, at an election held in this case in which only the name of the Adirondack Leather Workers Union, an unaffiliated organization, appeared on the ballot, that union received 27 of the 28 votes cast.

The Board, however, has refused to rescind the certification of a union on the ground that it has not complied with the filing and affidavit requirements of the act. Thus, in the *J. Freezer & Sons, Inc., case* (75 N. L. R. B. No. 75), where an affiliate of the United Mine Workers Union was certified 2 days before the new law went into effect, the Board denied the employer's request for reconsideration of the certification. The Board grounded its decision upon section 103 of the act, which specifically provides that a certification issued prior to the effective date of the new law shall not be affected by the act for at least 1 year after the date of its issuance.

In the *Harris Foundry & Machine Co. case* (76 N. L. R. B. No. 14), decided February 15, 1948, the Board ordered a decertification election despite the fact that the incumbent union had not complied with the registration and filing requirements. The Board stated:

> * * * to hold otherwise would confer upon noncomplying unions the power to immunize themselves against decertification proceedings by their very refusal to comply with their registration and filing requirements of the amended act.

The Board noted that the election would not result in a certification if the union won the election, unless it complied with the filing requirements.

The question as to the application of the affidavit requirement to officers of a local union where an international union in its own name has filed a petition has recently been raised in the *Warshawsky & Company case* (75 N. L. R. B. No. 159), decided February 10, 1948. In this case, the international union, the United Automobile Workers of America, CIO, which had complied with the filing requirements, filed a petition. The International Association of Machinists, an intervenor, requested the dismissal of the United Automobile Workers' petition on the ground that the local union involved had not complied with the filing requirements. The Board stated:

> * * * The compliance status of a local chartered by the petitioner is not an issue in this proceeding because the petition herein was filed by the petitioner, a national labor organization.

Accordingly, the Board directed a run-off election and placed the United Automobile Workers' name on the ballot, as well as that of the International Association of Machinists.

The Warshawsky decision appeared to point the way for local unions to have their cases processed by the Board without having complied with the filing and affidavit requirements. The *Lane-Wells case* (21–RC–66), however, greatly limited the effect of the earlier decision. In a unanimous decision the Board held that because the petitioner, an international union, "is in reality acting in behalf of the local which was not in compliance" the case should be dismissed. The Lane-Wells decision was later recalled, and an election ordered, when the Board's attention was brought to the local being in compliance after the hearing and before the Board's order issued. Presumably the rule announced in the first decision that an international union may not front for a noncomplying local is still in effect.

The *Univis Lens case* (9–RD–20) illustrates the extent to which a noncomplying union may use the Board processes. A petition for decertification of the United Electrical, Radio and Machine Workers, CIO, which had been the contract representative, was filed on May 26, 1948, during the course of a strike called by that union on May 5, 1948. On June 29, the Board directed an election and placed the electrical workers' union on the ballot. The union lost the election held on July 23. The union promptly filed objections to the conduct of the election, alleging employer interference and misconduct. The regional office investigated and recommended the objections be dismissed as raising no substantial or material issues. The union filed exceptions to the regional director's report. The Board, on August 19, ordered a hearing before a trial examiner. The trial examiner's findings, and finally an order of the Board are still awaited.

It appears clear that it was the intent of the statute to deny the facilities of the Board to noncomplying unions. Improper conduct justifying the setting aside of an election must also, in almost all cases, amount to an unfair labor practice. Handled as an objection, the remedy is the affirmative act of the Board in setting aside the election, but as an unfair labor practice, the remedy is a cease-and-desist order. The committee believes that if sections 9 (f), (g), and (h) are amended in other respects as later recommended, the amendment should also provide that objections to the conduct of an election should not be entertained if filed by a noncomplying union.

There have been several court tests of the validity of the Communist-disclaimer provision. On September 8, 1947, the United States District Court, Northern District, Texas, held that the filing requirement was constitutional on the petition of the Oil Workers International Union, requesting a mandatory injunction to compel the Board's regional director to count the ballots of a pre-Taft-Hartley election which he had impounded because of the failure of union officials to file the required affidavits (*Oil Workers International Union* v. *Elliot*, ———).

In *National Maritime Union of America* v. *Herzog* (————), a statutory court consisting of three judges sitting in the United States District Court of the District of Columbia held, with one judge dissenting, that the requirements of section 9 (f), (g), and (h) were constitutional. This decision was affirmed on June 21, 1948, by the Supreme Court without, however, passing on the validity of section 9 (h). The Supreme Court found it unnecessary to pass upon the validity of section 9 (h), the union not being in compliance with section 9 (f) and (g), which it found to be constitutional.

On June 29, 1948, another statutory court of three judges sitting in the United States District Court, Southern District, New York, in two cases with similar facts, held the requirements of section 9 (h) to be constitutional, with one judge dissenting. In these cases, a local of United Retail, Wholesale and Department Store Employees of America, CIO, and the American Communications Association, CIO, were in compliance with section 9 (f) and (g), but not section 9 (h). (*Wholesale and Warehouse Workers Union* v. *Douds; American Communications Assn. v. Douds;* Civ. 46–157; 46–405.) The Supreme Court has granted certiorari.

The constitutionality of these subsections was also challenged in *NLRB* v. *Inland Steel* (C. C. A. 9). In this case the Board had conditioned its order requiring the employer to bargain with United Steelworkers of America, CIO, upon the union's compliance with section 9 (f), (g), and (h) within a specified period of time. The court of appeals granted enforcement of the Board order with the condition, and review by the Supreme Court has been sought.

SUSPENSE DOCKET

In limiting Board action until the filing requirements of sections 9 (f), (g), and (h) have been met, all three sections use the words, "No investigation shall be made * * * of any question * * * concerning the representation of employees, no petition under section 9 (e) (1) shall be entertained, and no complaint shall be issued pursuant to a charge * * *." Use of the words "no petition shall be entertained" in connection with union-shop authorization elections has been interpreted by the general counsel to require him to refuse to accept petitions for this type of election. Similarly he has interpreted the words "no investigation shall be made" in connection with representation elections as requiring him to accept such petitions but forbidding him to take any action with respect to them. By implication the statutory treatment of unfair-labor-practice charges requires

him to accept such charges from a noncomplying union, perhaps investigate them fully up to the point of issuing complaint, at which point they become dormant (hearings, p. 1171).

In practice the regional offices have refused to docket petitions for union-shop authorization elections unless the petitioning union is in compliance, but they have been accepting and docketing petitions for representation elections and unfair-labor-practice charges from unions not in compliance. In such cases a "10-day notice" is sent to the filing union stating that its petition or charge will be dismissed unless the filing deficiency is remedied within a 10-day period.

Practice has varied in the different regions as to the action taken on the tenth day if the union still is not in compliance. If the petitioning or charging union is one that has never been in compliance, and the international union with which it is affiliated has not complied, it is the general practice to dismiss the case on the tenth day. However, if the union is one which has been in compliance, and has lost that status because of a new election of officers, and the regional director has cause to believe compliance is only delayed, the case is investigated and made ready for formal action.

Other factors make the method of handling in these cases extremely important to the union involved. Section 10 (b) provides a 6-month statute of limitation on the filing of unfair-labor-practice charges. Dismissal of a charge for noncompliance may prevent it being processed on refiling if the statute has run in the interim. The time element also may become extremely important in representation matters because of rules of decision established by the Board on "contract bars." For example, a union seeking an election among employees of an employer who has a contract with another union must file its petition before that contract is automatically renewed under the automatic renewal clause common in such contracts. In these cases dismissal of a petition for noncompliance may operate to prevent its refiling for the life of a new contract, even though the petitioning union brings itself into compliance within a matter of days, or even hours.

While these factors appear to justify the use of discretion by the general counsel in the dismissal of charges and petitions filed by unions temporarily out of compliance, there is another side to the picture. An employer against whom a charge has been filed has an interest in the early determination of the validity of such charge. An employer and a union already having a contract should not have their negotiation for a new contract held up indefinitely while an intervening union delays coming into compliance.

The general counsel recommended (hearings, pp. 1171–1172) that section 9 (f), (g), and (h) be amended by using the words "shall not be entertained" with respect to charges and representation petitions as well as union-shop authorization elections.

Unions have now had 18 months of experience with the compliance requirements and there appears little justification for delay in achieving such status. The "suspense docket" created by permitting petitions and charges to be docketed, perhaps investigated, and then to lie dormant for indefinite periods, burdens the general counsel with much useless work.

After balancing all of the factors, the committee recommends that section 9 (f), (g), and (h) be amended to provide in part that no petition under sections 9 (c) and 9 (e) (1), and no charge by a labor organization under section 10 (b) shall be entertained unless

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PLACE OF FILING

The information required in section 9 (f) and (g) is filed with the Secretary of Labor, while the non-Communist affidavits required by section 9 (h) are filed with the Board. Both are conditions precedent to the availability of the processes of the Board. Coordination of the two filings has been a source of some delay. The general counsel testified (hearings, pp. 1169, 1170) that if the filing requirements were consolidated in one agency much difficulty could be avoided. The committee agrees that this would be preferable to the present arrangement.

There does not appear to be compelling reasons for the selection of either the Labor Department or the Board as the place of filing. Since the filing is so closely related to the Board's action, it seems to be more properly the place for filing. Because of the statute of limitation on charges, and the Board's rules on timeliness of petitions in contract bar cases, the time element in filing often becomes quite important. Especially is this true if the amendments suggested above under the subtitle "Suspense Docket" are adopted. Having a closer realization of these problems, the Board will be under a greater compulsion to expedite filing procedures. The committee, therefore, recommends that the filing requirements be consolidated in the Board.

COMPLIANCE WITH SECTION 9 (F) (B) ON EXPIRATION OF A FISCAL YEAR

Section 9 (f) (B) requires each labor organization to file financial reports "as of the end of its last fiscal year." In construing this provision, a question arose as to whether the term "last fiscal year" referred to the fiscal year last preceding the filing of the required report or to the fiscal year last preceding the filing of the petition or charge by the union. To illustrate, a union whose fiscal year expired on December 31 filed its first financial statement on September 1, 1947, using its December 31, 1946, fiscal statement. On January 5, 1948, it files an unfair-labor-practice charge. It has only been 4 months since it made the required filing with the Secretary of Labor, but the end of a new fiscal year has intervened. Must there be a new financial statement filed before the January 5 charge may be processed? The general counsel ruled in the affirmative, believing it to be the interest of the provision to require current financial information.

Unions put forward the quite reasonable argument that an undue hardship was imposed upon them in requiring filing immediately after the close of their fiscal year as a condition precedent to having their cases acted upon. Their books were frequently not audited, they said, until some time after the close of the fiscal year, and thus there was a period in which they were unable to have their cases acted upon. The same auditors usually examined the books of the various locals, and there was a further time lag.

The general counsel then established a 90-day period of grace after the close of the fiscal year in which to file. Both the Board and the

general counsel have suggested to the committee that authority to grant such an extension be written into the statute since they have doubt as to their authority now to take this action.

The committee feels that without a period of grace the provision is unworkable. While it appears that a construction in which compliance, once accomplished, is effective for a full year, irrespective of the date of expiration of the union's fiscal year, is possible under the words of the statute, there is merit in having the information current and reflecting the union's present financial position. The committee believes that a period of 120 days in which to file would not be unreasonable. It therefore recommends the insertion of the words "which report shall be filed within 120 days of the end of such fiscal year" at the appropriate place in section 9 (f) (B) (1).

"OFFICERS"

Section 9 (h) requires the non-Communist affidavit to be filed by the "officers" of the labor organization seeking to use the services of the Board. In determining who are officers within the meaning of this provision, the Board has not looked beyond the constitution of the labor organization involved. As a result, a few labor organizations have amended their constitutions to provide that members of executive councils and committees are not officers. Thus, the individuals who, as a practical matter, both formulate union policy and carry it out, may not be required to execute the affidavit (hearings, p. 1171).

The provision has not operated to require affidavits of another group of individuals who are in position to exercise considerable control over union affairs. The union business agent or the international representative, in many instances, has more influence in such affairs than do officers of a particular local. Again, the local district council of a parent labor organization sometimes does all the bargaining for its members, but these council members are not officers within the union's constitution.

Testifying before the committee (hearings, p. 1171), the general counsel suggested that the committee give consideration to a definition of the term "officer" which would remove this possible circumvention of the law.

The committee recommends that section 9 (h) be amended to provide that the term "officer" for the purposes of the section be defined to include members of all policy-forming and governing bodies and anyone who exercises negotiating authority.

FILING BY EMPLOYERS

The argument most often advanced by union leaders against the requirements of section 9 (h) is that it is not also applicable to employers and their officers as a condition precedent to use of the Board's services. Suggestions for an amendment to accomplish this purpose were made by various witnesses during the committee hearings. The committee can understand that there may be some feeling of injustice in the mind of the union officer who sits across the bargaining table from the employer who has not been required to make a non-Communist affidavit.

It was the stated purpose of the act to create and preserve a balance in the law as between labor and management. The committee has frequently expressed its determination to recommend amendments if it appears that the law operates to create an injustice to either unions or employers. While the committee has not discovered any evidence that a substantial number of Communists may be found among corporate officers, employers, or management representatives who are responsible for labor relations, in the interest of creating and preserving a balance in the law as between labor and management, it is recommended that they also be required to file non-Communist affidavits as a condition precedent to use of the act.

The committee's only reservation with respect to this amendment arises out of questionable constitutionality. The Board's principal argument in defense of the validity of section 9 (h) in those cases where constitutionality has been raised has been that it rests on a congressional finding, justified on the facts, that Communist labor leaders use unions for political purposes rather than the collective bargaining purposes which the law seeks to encourage. A similar finding with respect to the suggested amendment would be more difficult to make in view of the meager evidence of Communist infiltration into business enterprises.

CONCLUSIONS WITH RESPECT TO THE AFFIDAVIT REQUIREMENT

The committee believes that the non-Communist affidavit provision has already demonstrated its effectiveness as an aid to unions and their members in their desire to drive the Communists from positions of power in labor organizations. Since that point having been established beyond argument, consideration should be given by Congress to perfecting the approach to the problem. Communists do not give up easily and have and will take quick advantage of any loopholes which appear in the law. Control of the labor movement has been the Communists' most effective means of gaining ultimate control of the government itself in many European countries.

The committee wishes to emphasize as strongly as possible that in any consideration of amendments to this section, great care must be given to prevent litigation of the question in Board hearings. If the parties to Board hearings are permitted to question the veracity of the affidavit, or the fact as to it having been filed, records will be hopelessly overburdened with such proof. Board hearings must be confined to evidence going into merits of the case at hand if the Board is to carry out its real function of deciding unfair labor practice cases and determining bargaining representatives. The Board recognized this principle in *Lion Oil Co.* (15–R–2264) when it upheld the ruling of the hearing officer in his denial of the employer's motion to dismiss the petition since the record did not show the petitioning union had complied with the requirements of section 9 (f) and (h). The Board said that compliance is clearly for the Board to determine and its official records indicated that the union had complied.

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Compulsory Union Membership

UNION SHOP AUTHORIZATION ELECTIONS

The closed shop which requires preexisting union membership as a condition of obtaining employment was abolished by the act. Employers are permitted, however, to enter into agreements with a union which is the unassisted majority choice of the employees in an appropriate bargaining unit, requiring all such employees to become members of the union within 30 days after being hired if a majority of such employees have shown their intent by a secret ballot to confer authority upon their representative to negotiate such an agreement (sec. 8 (a) (3)). The procedural mechanics for the authorization election are provided by section 9 (a).

The election requirement has been subjected to criticism from various sources. The principal complaint of labor organizations is that the majority vote of those eligible, rather than the majority vote of those voting, is required. This complaint, however, has been based more upon principle than upon practical results. Statistics referred to below show that authorization elections have been won by unions in 98.2 percent of the cases, and that 84 percent of the eligible voters voted in favor of the union shop. An analysis of the 135 elections lost by the unions between February 1 and April 30, 1948 (hearings, p. 59), indicates that few of them were lost because of the "majority of those eligible" requirement.

Both the Chairman of the National Labor Relations Board and the general counsel have indicated their disapproval of the voting requirement. While the Board itself has not been much burdened with the authorization election requirement (only one-third of 1 percent of the union-shop cases came before the Board—hearings, p. 50), it believes that the administrative burden upon the field personnel has necessarily distracted their attention from their other responsibilities under the act (hearings, p. 50). The general counsel's objection is chiefly that the results, as shown by the elections so far conducted, do not justify the expense to the Government in conducting them and the difficulty, if not impossibility, of conducting them in industries (such as building construction) where employment is intermittent.

Employers have divided in their recommendations on the desirability of eliminating the voting requirement. A few have expressed the opinion that such elections have the practical effect of increasing the number of contracts with compulsory membership features. They point out that the election provision has taken this subject out of the field of collective bargaining, since an employer will almost always yield to the union's request for a union shop after his employees have demonstrated their desire by an overwhelming vote.

Other employer spokesmen have insisted that experience with the requirement has not been sufficient to justify its elimination. They pointed out that the elections so far conducted have been held for the most part where there was already a contract with union security provisions. At the committee's request, a check was made by the general counsel for a short period to determine the validity of this statement. The chart appearing on page 63 of the hearing does bear out the assertion that the elections being held are, for the most part, in instances where prior union security contracts were in existence. The election results, however, do not establish any substantial evidence that in the absence of prior union security contracts authorization will not be granted by the vote of the employees. They may indicate that more elections are lost in those instances where there is no history of previous union security contracts. Further, it seems obvious that labor organizations have requested authorization elections in situations where they have reason to believe they have the best chance of success.

Still other witnesses argued that the expense to the Government of conducting the elections, and the burden on the Board, was well worth the price so long as any elections were being lost, since it made it impossible for compulsory membership conditions to exist against the will of the majority of the employees affected. They further insisted that the burden upon the Board was temporary in nature, and predicted that pressure for such elections would exist in constantly diminishing proportions. Month to month statistics of the Board on the number of elections held has borne out this prediction. The high point in elections held was reached in May 1948, with 4,470 conducted. By September 1948 the number of elections held had been reduced to 2,340. Accompanying this reduction in the number of elections held was the increasing capacity of the Board to handle such elections with a minimum of effort. Perfection of procedures and mechanics has resulted in regional offices being able to hold elections now within 2 weeks from the date they are requested.

Various charts which present the picture on union-shop authorization elections through April 1948 are found on pages 57, 59, and 63 of the committee's hearings. For a more recent analysis, the Board has prepared three additional charts, which appear at the end of this section.

Remaining to be considered are the practical difficulties of conducting such elections where employment is intermittent. The closed shop has been traditional where union labor is used in the building trades. The mechanics of compelling union membership after 30 days of employment, and under a contract entered into only after an election conducted by the Board, were obviously not tailored for an individual construction job. As construction of a building proceeds, the members of various craft unions are called in to perform their particular work. In many cases, the total employment of any one craft on one building is much less than 30 days. A petition for a union-shop authorization election filed today, and processed to the point of an election 1 month later, would find no members of the petitioning craft still on the job on the day of the election.

In an attempt to solve the problem, the general counsel, with the cooperation of the building-trades department of the American Federation of Labor and various employer associations, worked out the "labor pool" plan. In general outline, the plan is as follows: A petition is

filed by the building-trades council in a geographical area where the council regularly contracts with an identifiable group of employers. The Board's regional office in the area in which the petition is filed assembles the pay rolls of all employers in the group. A card record for each employee whose name appears on one or more of such pay rolls is prepared showing the number of days during the past year he has worked for one or more of such employers. Casuals and transients are then eliminated, and those whose names remain constitute the number of employees to be affected in establishing the bargaining unit. If a majority vote to authorize a union shop, it may be entered into by agreement.

Some question may arise that this plan carries out the full intent of the statute. In practical effect a closed shop is produced in the concept that (1) a group of employers are treated as "the employer," and (2) the individual worker, employed by one or more employers for a total of 30 days, must be a member of the union before he can be hired by the next successive employer. However in this framework is the only feasible solution so far advanced.

The plan was first tested in the heavy construction industry in an area covering 33 counties in western Pennsylvania. There were 2,709 eligible voters on 95 projects with 5 crafts involved. Results of the election showed that of the 2,709 eligible voters, 2,483 actually voted; 2,214, or 89.2 percent, were in favor of the union shop; and 269, or 10.8 percent, were against it. The Board estimates that the total cost of this election, including salaries of Board personnel handling the election, amounted to $40,000. It is not an accurate forecast of what other such elections will cost since it was started in the road-building industry in an off-season, and the time spent in preparing an eligibility list was quite long.

After the experience in Pennsylvania, it was planned to conduct a much larger election in Detroit. So many practical difficulties were encountered that the election has not been held. There were at least 2,200 employers having jobs in the area deemed to constitute the labor pool. It was impossible to obtain consent agreements from each of the 2,200, and in an ordered election it would still be necessary to obtain pay rolls from each. It was estimated that there were 5,000 jobs in process in the area. While it would be impossible to man 5,000 polling places, it could not be reduced to less than 100 and permit easy access to voters. Many of the employers who were contacted, particularly home builders, resisted the assumption that their business was affected by interstate commerce to the extent of their being subject to the jurisdiction of the Board. A number of unions already had closed-shop contracts, and legal because they were entered into prior to enactment of the law, and had a long time yet to run. They objected to being made a part of the "unit." Some craft unions objected, too, that their geographic jurisdiction was being disturbed. Home-building employers objected to being included with industrial, road building, and other segments of the industry.

These are just a few of the practical problems which present themselves when the union-shop-authorization election is brought up. They illustrate the tremendous task, if not impossibility, of conducting such elections in this industry.

The Board has been processing union-shop-authorization elections for approximately a year. During that year only about 5 percent of the eligible voters voted against the union shop, and less than 2 percent of the elections resulted in rejection of the union shop. The cost to the Government of 2,457,352 employees voting is estimated by the Board at about 40 cents a vote.

On May 5, 1948, bills were introduced in both branches of Congress seeking to eliminate the union-shop-authorization vote. S. 2614, introduced by Senator Ives, retained the vote to rescind the authority to enter into a union shop, but dispensed with the necessity of such a vote as a condition precedent to a legal union shop. The bill also retained the requirement that a union be in compliance with the non-Communist oath, and other filing provisions of sections 9 (f), (g), and (h).

In recommending elimination of the union-shop-authorization vote, the committee believes it is essential that the two provisions of the Ives bill, mentioned above, be retained in the law. By retaining the deauthorization election provision the way is still open for employees not to have the union shop imposed when the majority do not want it. The 2 percent which rejected the union shop last year could still do so under the Ives bill. Equally important is the fact that the filing requirements do serve to prevent Communist-led unions from obtaining a form of union security which may serve to perpetuate their leaderships.

The general counsel has suggested an amendment to the Ives bill which this committee strongly recommends (hearings, p. 71). Under the Ives bill the petition for deauthorization could only be filed when a union shop contract was presently in force. The suggested amendment would permit the election to be held before such a contract is entered into. It is also suggested that provision be made that the rescission of authority shall operate to prevent the parties from entering into a union-shop contract until the majority of the employees eligible to vote have so authorized.

The committee recommends the act be amended as follows: That section 8 (a) (3) (i) and (ii) of the National Labor Relations Act is amended to read as follows:

> If such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made *and has complied with all the requirements imposed by sections 9 (f), (g), and (h).* (ii) unless, following an election held as provided in section 9 (e) (2) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement.

That paragraph (1) of section 9 (e) of such act be repealed.

That paragraph (2) of such section is amended to read as follows:

> (2) Upon the filing with the Board by 30 per centum or more of the employees in an appropriate collective bargaining unit of whom a labor organization is the representative as provided in section 9 (a), of a petition alleging they desire

to rescind the authority of such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, the Board shall take a secret ballot of the employees in such unit and shall certify the results thereof to such labor organization and to the employer.

That subsections (f), (g), and (h) of section 9 of such act be amended by striking out the words "no petition under section 9 (e) (1) shall be entertained," where they appear in each of such subsections.

Analysis of union-shop-authorization elections Aug. 22, 1947–Sept. 30, 1948 [1]

State	Number of elections	Results of elections		Eligible votes	Valid votes cast		
		For union shop	Against union shop		Total	For proposition	Against proposition
Total	[2] 26, 167	25, 530	634	2, 844, 146	2, 457, 352	2, 316, 383	140, 969
Alabama	149	147	2	38, 412	30, 174	28, 979	1, 195
California	2, 759	2, 653	106	213, 603	180, 515	167, 166	13, 349
Colorado	336	329	7	12, 607	11, 743	11, 330	413
Connecticut	290	288	2	42, 593	38, 173	35, 943	2, 230
Delaware	38	36	2	2, 874	2, 408	2, 329	79
District of Columbia	233	227	6	17, 687	13, 861	13, 124	737
Idaho	58	58	0	2, 804	2, 506	2, 358	148
Illinois	[3] 1, 849	1, 818	30	219, 270	185, 331	172, 033	13, 298
Indiana	758	733	25	106, 084	90, 609	84, 551	6, 058
Kansas	290	282	8	17, 457	15, 184	13, 791	1, 393
Kentucky	297	291	6	32, 687	28, 598	27, 240	1, 358
Louisiana	211	206	5	20, 470	17, 847	17, 073	774
Maine	121	120	1	39, 120	33, 076	31, 175	1, 901
Maryland	321	312	9	44, 825	39, 932	38, 256	1, 676
Massachusetts	1, 490	1, 464	26	190, 262	167, 962	156, 848	11, 114
Michigan	1, 194	1, 143	51	303, 021	258, 570	247, 706	10, 864
Minnesota	924	888	36	52, 992	45, 987	43, 825	2, 162
Mississippi	24	24	0	6, 797	5, 896	5, 485	411
Missouri	[3] 2, 644	2, 568	75	118, 552	102, 802	98, 496	4, 306
Montana	152	150	2	5, 829	5, 198	5, 005	193
Nevada	8	8	0	107	91	87	4
New Hampshire	80	79	1	19, 286	16, 662	15, 659	1, 003
New Jersey	863	852	11	162, 049	134, 940	126, 973	7, 967
New Mexico	27	26	1	1, 183	1, 044	978	66
New York	[3] 3, 808	3, 765	42	303, 933	270, 961	258, 390	12, 571
North Dakota	13	12	1	444	387	372	15
Ohio	1, 841	1, 799	42	255, 088	220, 412	202, 495	17, 917
Oklahoma	263	251	12	9, 289	7, 897	7, 488	409
Oregon	1, 064	1, 036	28	58, 857	51, 150	48, 288	2, 862
Pennsylvania	1, 626	1, 590	36	240, 168	208, 238	197, 697	10, 541
Rhode Island	243	240	3	42, 211	37, 361	35, 099	2, 262
South Carolina	16	16	0	7, 213	5, 995	5, 778	217
Utah	142	139	3	5, 767	5, 069	4, 772	297
Vermont	49	44	5	8, 126	6, 919	6, 514	405
Washington	1, 064	1, 034	30	92, 023	84, 559	80, 646	3, 913
West Virginia	131	130	1	27, 702	23, 787	22, 812	975
Wisconsin	598	585	13	103, 515	90, 563	85, 650	4, 913
Wyoming	21	21	0	807	741	705	36
Alaska	1	1	0	62	51	49	2
Hawaii	16	15	1	2, 934	2, 181	1, 908	273
Puerto Rico	155	150	5	15, 445	11, 972	11, 310	662

[1] No elections were held in Arizona, Arkansas, Florida, Georgia, Iowa, Nebraska, North Carolina, South Dakota, Tennessee, Texas, and Virginia.
[2] Includes 3 elections in which the results are indeterminate.
[3] Includes 1 election in which the result is indeterminate.

Source: National Labor Relations Board, Administrative Statistics Branch, Nov. 15, 1948.

Union-security-authorization elections held February 1948 to Sept. 30, 1948 [1]

	Total elections	Eligible voters	Valid votes cast
Total, February to September 1948	24, 215	2, 569, 899	2, 209, 631
Consent	23, 228	2, 229, 855	1, 930, 170
Stipulated	72	35, 883	27, 184
Regional director directed	911	303, 914	252, 047
Board ordered	3	190	172
February 1948	1, 504	191, 107	169, 924
Consent	1, 464	173, 607	155, 551
Stipulated	6	2, 203	2, 034
Regional director directed	34	15, 297	12, 339
Board ordered	0	0	0
March 1948	2, 755	261, 445	232, 760
Consent	2, 703	247, 920	221, 282
Stipulated	3	294	271
Regional director directed	49	13, 231	11, 207
Board ordered	0	0	0
April 1948	3, 305	347, 463	307, 400
Consent	3, 181	329, 673	292, 118
Stipulated	9	3, 130	2, 571
Regional director directed	115	14, 660	12, 711
Board ordered	0	0	0
May 1948	4, 470	369, 196	325, 925
Consent	4, 160	327, 810	291, 260
Stipulated	20	4, 088	3, 579
Regional director directed	290	37, 298	31, 086
Board ordered	0	0	0
June 1948	4, 047	433, 341	369, 139
Consent	3, 892	379, 026	327, 992
Stipulated	14	15, 213	9, 978
Regional director directed	140	39, 101	31, 168
Board ordered	1	1	1
July 1948	2, 795	418, 592	348, 830
Consent	2, 690	294, 164	239, 132
Stipulated	7	628	568
Regional director directed	96	123, 713	109, 052
Board ordered	1	30	20
August 1948	2, 999	328, 546	270, 351
Consent	2, 879	277, 866	233, 729
Stipulated	5	212	175
Regional director directed	114	50, 309	36, 296
Board ordered	1	159	151
September 1948	2, 340	220, 209	185, 302
Consent	2, 259	199, 789	169, 106
Stipulated	8	10, 115	8, 009
Regional director directed	73	10, 305	8, 188
Board ordered	0	0	0

[1] Unadjusted data.

Source: National Labor Relations Board, Administrative Statistics Branch, Sept. 12, 1948.

Size of unit in union-shop security authorization elections held Feb. 1 to June 30, 1948

	Total elections	Size of unit			
		1–249	250–449	500–999	1,000 and over
Total elections	16, 244	14, 921	708	381	234
February	1, 504	1, 342	80	43	39
March	2, 859	2, 640	118	70	31
April	3, 308	3, 025	147	83	53
May	4, 478	4, 168	177	81	52
June	4, 095	3, 746	186	104	59
	Percent	*Percent*	*Percent*	*Percent*	*Percent*
Total, 5 months	100. 0	91. 9	4. 4	2. 3	1. 4
February	100. 0	89. 2	5. 3	2. 9	2. 6
March	100. 0	92. 3	4. 1	2. 5	1. 1
April	100. 0	91. 5	4. 4	2. 5	1. 6
May	100. 0	93. 1	4. 0	1. 8	1. 1
June	100. 0	91. 5	4. 6	2. 5	1. 4

Source: National Labor Relations Board, Administrative Statistics Branch, Nov. 15, 1948.

OTHER RESTRICTIONS ON COMPULSORY UNION MEMBERSHIP

While we have recommended an amendment which will dispense with the requirement of elections to authorize the union shop, the committee wants to make clear its belief that the other restrictions upon compulsory union membership must be retained. When Congress abolished the closed shop and permitted the union shop with the safeguard that it might not be used to deny employment to anyone whose lack of membership was occasioned by anything other than refusal to pay a reasonable initiation fee and regular membership dues, it was attempting to eliminate the abuses of compulsory membership while still permitting labor organizations to enjoy a form of union security.

Some members of the committee believe the law should forbid all forms of compulsory membership. They point to the various ingenious devices that have been used in a few labor-management contracts since passage of the law in an effort to bypass the restrictions of the law. Since the restrictions were provided for the protection of the employee and the prospective employee, they are not something which either the employer or the union may bargain away. A sound, well-administered union does not need compulsory membership. The service which it provides will guarantee full membership. We have guaranteed religious freedom and freedom of speech. The right to work at one's chosen profession should have equal protection.

In permitting a limited form of compulsory membership, Congress recognized that the "free rider" argument had some validity. The argument is that since all employees enjoy a wage increase or other benefits obtained by the union, all should be required to pay their share of the expense of obtaining such by joining the union.

Some union leaders have insisted that their unions cannot continue to exist without the closed shop. Substantial increases in union membership during the past year would seem to refute such statements. The continued success of the Railway brotherhoods in maintaining and gaining new memberships while being prevented by law from having compulsory membership also demonstrates the truth of the conclusion that a sound, well-administered union does not need such forms of union security.

The long 1948 strike on the Pacific coast water front had as one of its issues the union's demand for a continuation of the hiring hall. The committee has published a study of this industry. Attention is directed to that portion of the study which deals with the practical effects of a union-controlled hiring hall. The power of discipline has passed completely from the hands of the employers to those of union officials. The right of the employer to discharge for incompetence, insubordination, or failure to perform the work as required became wholly illusory, for, although an employer might dismiss a man from a particular work assignment, the longshoremen, even though he may have committed a serious offense, remained as much entitled to his share of the work of the port as any other. More than that, he could be and frequently was redispatched to the very employer who had dismissed him, and the employer was bound to accept him. Under this system, every incentive to good work was destroyed. No longshoremen, no matter how competent or skilled, earned any more than the one who was indolent or unskilled. An employer could not reward the efficient workman by giving him more pay or more hours of work. The committee believes that in the interest of the American workingman, as well as in the interest of production, management must exercise some control over the hiring process.

It would serve little purpose to again refer to the many examples of abuses of compulsory membership which were brought to the attention of the labor committees of both Houses of Congress prior to passage of the Taft-Hartley law. Many State legislatures took notice of those abuses by passing laws attempting to regulate or abolish compulsory unionism.

It has been argued that the act's restrictions upon compulsory unionism should be removed because many employers have demonstrated their dislike for the restrictions by entering into contracts of questionable legality, and because employees have demonstrated their desires for union security by their overwhelming votes in union-shop-authorization elections. It should be pointed out that in those elections the employees were voting for the limited type of compulsory-membership contracts which the law permits with all of the safeguards against abuse of power. They were not voting for the closed shop. In answer to those employers who have not liked to see the status quo in their shops disturbed, it seems sufficient to say that the restrictions were for the protection of individual employees and not for the employer's benefit.

There have been few Board decisions as yet requiring an interpretation of the restrictions upon compulsory union membership. In the *National Maritime Union case* (78 N. L. R. B. 137), decided August 17, 1948, the Board found that the demand of the union for continuation of the traditional hiring hall constituted a violation of section 8 (b) (2). The Board stated that the hiring-hall provision, as applied in the past, would inevitably operate to discriminate against nonunion applicants for jobs. The union was therefore found to have attempted to cause employers to discriminate.

In *Hager & Sons Hinge Manufacturing Co.* (14–RC–8), decided November 9, 1948, the Board held that a union-shop contract entered into without the union-shop-authorization election was no bar to a representation election sought by another union, although the contract had some 6 months yet to run.

Perhaps the strongest impact of the law has been in the field of compulsory unionism. Certainly those restrictions have been the subject of a concerted attack by organized labor. There have been a number of strikes in which the major issue was the union's demand for continuation of a closed-shop condition of employment. In some instances the employers have yielded to such demands and entered into contracts of doubtful legality. Other labor organizations, which have had closed shops for many years, have availed themselves of the orderly procedures of the act to obtain union-shop contracts. The act's prohibition has prevented the extension of the closed shop into industries where it had not become common practice. The committee believes that the only alternative to prohibition of the closed shop is the definitely less desirable complete Government regulation of the internal affairs of labor organizations to prevent abuses of the closed shop. Other than the elimination of the union-shop-authorization

election, the committee believes considerably more experience under the act to be necessary before either a recommendation for more or less restrictions would be warranted.

Free Speech

Section 8 (c) provides:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

Some alarm was expressed that this provision would involve Board hearings in endless argument over the introduction of evidence and result in the exclusion of facts and material, the coercive nature of which could not be determined at the time it was offered. That possibility was eliminated by an early instruction to field attorneys by the general counsel. He ordered:

> In future hearings, Board attorneys should request trial examiners to admit in evidence all utterances which might conceivably be found coercive, since the competency of such utterances cannot well be determined until the conclusion of the hearing, and the Board should have an opportunity to pass upon such evidence. No prejudice can, of course, result to any party from the admission of doubtful utterances which are later found by the Board to be privileged under the new law, there being neither a jury to be influenced thereby nor findings based thereon.

The committee is concerned with the Board's interpretation that section 8 (c) does not require it to consider as privileged noncoercive statements of an employer in a preelection atmosphere when the Board is considering objections to the conduct of a representation election (*General Shoe Corp.*, 77 N. L. R. B. No. 18). The Board said that Congress only applied the section to unfair-labor-practice cases, and then set an election aside while holding that the employer's conduct did not constitute an unfair labor practice. The Board said:

> In an election proceeding, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. * * * when the requisite laboratory conditions are not present the experiment must be conducted over again.

While the doctrine announced by the General Shoe case has been somewhat modified in later decisions (*Hinde & Dauch Paper Co.*, 78 N. L. R. B. No. 60), there has been no reversal of the belief that section 8 (c) does not apply to objections in election cases. The Board has reversed the "captive audience" doctrine of the Clark Bros. case which held that free speech lost its constitutional protection when made on the employer's time and property, with employees required to attend. See *Babcock and Wilcox* (B–22 LRRM 1057). In a series of cases the Board has found interference in the action of an employer in questioning employees about their union activities and membership (*Fulton Bay & Cotton Mills*, 75 N. L. R. B. No. 111). The Board said such action was not the dissemination of views, arguments, or opinion that the section sought to protect. In a number of cases the Board has held employer statements to be a violation where the threat was hidden or implied.

The committee believes that the time has arrived where it is healthy to have all sides of the subject of unionization presented to employees. The mouths of employers had been fairly effectively sealed by the Board's interpretation of the Wagner Act. While the Supreme Court had ruled that words which contained no threat or promise of benefit were privileged, an employer who exercised his right to inform his employees that he did not like unions and preferred not to deal with them often found those statements being used to explain his motive for the discharge of a union member at some future time. The Board's old theory that an employer must maintain a strict neutrality on the subject of unionization of his employee has been credited as one of the reasons why it was possible for Communists to take over the leadership of some unions. It is also possible that some strikes could have been prevented or shortened in duration had the employer felt free to comment upon the issues.

The committee believes the position of the dissenting Board members in the General Shoe case was well taken when they said:

> If the expression or dessemination of views, arguments or opinion by an employer is to be afforded the full freedom which the amended Act envisages, it follows that the Board cannot justify setting aside elections merely because the employer avails himself of the protection which the statute specifically provides.

The committee therefore recommends that section 8 (c) be amended to read as follows:

> The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this act, nor may the same be a proper cause for objection to the conduct of any election under the provisions of this act, if such expression contains no threat of reprisal or force or promise of benefit.

Supervisory Employees

By redefining the term "employee" to exclude any individual employed as a supervisor, and defining the term "supervisor" to include only employees who actually supervise work of other employees, the act withdrew the Government's encouragement of organizations of supervisory personnel. This was a highly controversial provision and the prediction was frequently made that it would encourge strife. The committee has closely followed court and Board tests of the provision and its practical effects to date.

A strike of supervisory personnel at the Ford Motor Co. in Detroit was in progress at the time the act was passed. This strike had been called when the company refused to renew its contract with, or continue to recognize, the Foreman's Association of America as the bargaining representative of its foremen. The men returned to work a few days after passage of the act, having failed to obtain further recognition of the union by the company. Just recently the Ford Motor Co. announced a new plan covering responsibility and compensation of its foremen. The plan classifies foremen into six occupational groups and provides for promotion from one classification to another. Each foreman is made responsible for the quality of all materials produced in his department. The plan also provides for periodic salary surveys in the Detroit area to insure that Ford fore-

men are paid salaries equal to, or better than, the going rate in that area.

The committee has observed a growing trend of employer attempts to make their foremen a part of management. In many of the plants visited we found new programs designed to give more responsibilities to the lower ranks of supervision and to acquaint them not only with the policies of management but the reasons therefor. Not only has the exclusion of supervisory employees from the benefits of the act failed to produce the work stoppages predicted by opponents of the provision, but it has served to promote the establishment by employers of plans creating many new benefits for supervisory employees.

It was also predicted that many employers would deny the benefits of the act to rank-and-file employees by designating them as minor supervisory personnel. A check of the Board decisions indicates that such practices cannot be carried out. The Board has in all cases examined closely the actual status of the employee alleged to be a supervisor. It has been the employee's duties rather than his title that the Board has looked to in deciding supervisory status. Thus, group leaders who occasionally exercise supervisory authority, store managers who have no authority to hire or discharge, instructors who check the work of other employees, inspectors, and a production employee who occasionally substitutes for the foreman, have all been held not to fall within the statutory definition of the term "supervisor." See *Cole Instrument Co.* (75 N. L. R. B. No. 44), *Palace Laundry* (75 N. L. R. B. No. 40), *Electric Auto Light* (76 N. L. R. B. No. 167), *C. V. Hill Co.* (76 N. L. R. B. No. 24), *Ironton Fire Brick Co.* (9–RC–17)).

Most of the early cases decided by the Board required a determination of the effect of the Taft-Hartley exclusion upon cases already pending on the effective date of the act. If the violation was with respect to the duty to bargain with the union for supervisory employees, the Board and the courts have dismissed, *Eastern Gas & Fuel Associates* (U. S. C. A., 6th, decided Sept. 8, 1947). If the violation was the discriminatory discharge of a supervisory employee for union activity, the Board and the courts have required reinstatement and back pay (*N. L. R. B.* v. *Vail Mfg. Co.* (158 Fed. (2d) 664 (C. C. A. 7)).

The Board's decision in *Briggs Manufacturing Co.* (75 N. L. R. B. 569) has been of considerable interest to the committee. It was charged that the employer discriminated against an applicant for a supervisory job because, while a worker, he had filed charges against it under the Wagner Act. The Board's order did not require the employer to give the applicant a supervisory job or give him back pay, but did order the company to cease and desist from refusing to employ because of prior testimony. There may be an indication in its decision that the Board regards discrimination in hiring a foreman, or promoting a rank-and-file employee to a supervisory job on the basis of union activity, to be a violation. The Board stated, "Nor is our conclusion altered by the fact that [he] was an applicant for a supervisory position. He was a member of the working class when he applied for the job." The Board construed the term "employee" as including members of the working class generally.

If in a subsequent case the Board should order an employer to hire and give back pay to an applicant denied employment as a supervisor because of prior union activity, it would have the further problem of what to do if the employer discharged that individual from his supervisory job the following day.

Labor organizations which have confined their membership to supervisory employees have continued to urge an amendment which would give the act's protection to the organization of supervisory employees by labor organizations which do not accept rank-and-file employees to membership. The labor committees of both Houses of Congress gave exhaustive consideration to such suggestions and concluded that as a practical matter such a labor organization could never be truly independent. Senate Report 105 and House Report 245 set forth the evidence and conclusions upon which Congress relied in excluding supervisory employees from the benefits of the act. The committee has discovered no evidence to indicate that the exclusion was not a wise one, both as a matter of public policy and in the interest of the individual supervisory employee.

Jurisdictional Disputes

Section 8 (b) (4) (D) makes it an unfair labor practice for a labor organization or its agents—

> to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any service, where an object thereof is forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work.

The committee is happy to report that the history of this section during its 17 months' existence has not been one of Board hearings and orders. The Board has yet to decide a jurisdictional dispute. Formal action has been initiated in three cases. In the Ford Motor case referred to in our March 15 report the unions reached agreement after the hearing had been opened but before any testimony had been taken. In the second case a temporary restraining order was obtained against the International Alliance of Theatrical Stage Employees, AFL, which was alleged to have demanded the assignment to its members of certain work being performed by members of a certified union (————). In the third case the Board has heard oral argument but not yet decided the complaint that the International Association of Machinists had demanded jurisdiction over work being performed by the United Steelworkers of America, CIO, *Moore Dry Dock Co.* (————).

The remedies provided by the act for a violation of the prohibition of jurisdictional strikes are the usual cease-and-desist order of the Board, an action for damages to the injured party under section 303, and a temporary injunction similar to that obtainable in secondary-boycott cases in situations where such relief is appropriate. The procedure adopted by the Board pursuant to section 10 (k) is to give the parties 10 days after the filing of the charge to adjust the dispute; and, upon their failure to agree, a hearing is held before a trial examiner.

Upon the record made at such hearing the Board makes its award. If the award is not carried out a formal complaint is issued.

Jurisdictional disputes and strikes in support of such disputes have plagued the building and construction industry for many years. They have been injurious to employers, the workers involved, and the public. No labor leader has attempted to defend them, and all agree that they can best be settled by agreement among the unions involved. In past years labor organizations have agreed upon plans for the settlement of such disputes, but such agreements have been ineffectual when one of the disputants refused to accept the decision for settlement.

The absence of Board cases does not mean that jurisdictional disputes have ceased to occur in the construction industry. They are being settled without strikes and without Board intervention pursuant to an agreement creating a national joint board for settlement of jurisdictional disputes. The law's restrictions were the impetus for this action wherein the labor organizations agreed to a plan to decide their own disputes.

The agreement entered into on May 1, 1948, by the Building and Construction Trades Department of the AFL, the Associated General Contractors of America, and various employer associations creates a board of trustees and a joint board with the unions and the employers accorded equal representation on each. Jurisdictional disputes may be referred to the joint board by any of the unions involved in the dispute, the employer directly affected, or by the organization representing that employer. Pending a decision, no stoppage of work may occur over the dispute. Upon receipt of a notice of jurisdictional dispute, the board of trustees investigates to determine whether or not a disposition thereof has been made by a previous decision of record or recorded agreement. If the dispute is one having been previously so adjudicated, the board of trustees makes a binding award in accordance with the precedent. If the dispute has not been previously decided the joint board notifies the unions involved and a conference is held for the purpose of bringing about an agreement. If no settlement is reached within 10 days the case is docketed for hearing and decision by the joint board who shall render a decision within 10 days. The agreement binds all parties to accept the awards of the joint board.

On September 1, 1948, the joint board informed the committee that it had received some 40 disputes and had disposed of approximately 50 percent of them. The committee commends the building-trades unions and the contractor associations for their efforts, which have already been well rewarded. They have demonstrated that in the field of labor-management relations it is the function of the law to define the boundaries and the responsibility of the parties to reach agreement within those boundaries.

Featherbedding

Section 8 (b) (6), popularly referred to as the "featherbedding" provision, reads as follows: It shall be an unfair labor practice for a labor organization or its agents—

> to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

Since the Board has not passed upon the effect of this provision, the committee has examined the action of the general counsel in determining whether to issue complaints on various sets of facts. Since there is no appeal under the statute from his refusal to issue a complaint, his interpretations are highly important in assessing the effectiveness of the provision.

The general counsel's remarks concerning section 8 (b) (6) in his public addresses in the early history of the act foretold the action of his office in respect to many cases which later were presented to him.

On September 23, 1947, in speaking before the American Bar Association, he stated:

> The next and last of the listed unfair labor practices chargeable to labor organization is the prohibition against "featherbedding." The term "featherbedding" as it seems to be used through the industry, is much broader than the provisions of this section of the act. I have heard it applied in cases where the union rules required an employer to hire six men to do a job that two could do, or to provide "made" work which normally would be performed incident to general operations, or to the union's requirements for call-in pay; and some have even applied it to paid holidays. But within the purview of this section as it is written, the term has a decidedly narrow limitation. Stand-by crews, for example, who simply are present and do nothing, come within the proscriptions of this section; and it makes no difference whether they are sheet-metal workers hired to stand by while an iron worker does a job because of a jurisdictional dispute, or musicians who are held in the anteroom of a radio station while the disk jockey is turning platters in the control room.
>
> The gist of this section is that the payment is made for services "which are not performed or not to be performed." Thus, when the teamsters halted trucks at the mouth of the Holland Tunnel, and required the driver to put a member of the teamsters' union on the seat in order to qualify to deliver the load in New York City, and to pay him a full day's wages for taking the ride, I don't doubt that the owner of the truck called it featherbedding, but I have great doubt that it could ever be brought within the terms of this section of the statute. On the other hand, if the driver accepted the option which often was tendered to him of paying the money but waiving the privilege of having his "helper" ride with him, we have a situation where there were no services performed or to be performed, and probably a violation.

The general counsel's reference to the narrow limitation of the provision was borne out in one of the first cases heard by a trial examiner in which a violation of section 8 (b) (6) was charged. In the *Conway's Express case* (2–CC–14) the examiner found that the union had demanded that the employer pay one of its members for a trip made by a nonunion employee, and for which the nonunion employee had already been paid. The trial examiner dismissed this section of the complaint with the statement that since the services were actually performed (by someone), for which payment was demanded, there had been no violation. The general counsel argued that the intent of the provision required that the words "by the labor organization or its members making the demand" be read in after the word "performed." He insisted that the interpretation placed upon the provision by the trial examiner rendered it meaningless, for it would permit "stand-in pay" if the work were performed by other union members, nonunion members, or by the employer himself. The trial examiner's recommendations have not as yet been passed upon by the Board.

In a more recent case, a complaint was authorized by the general counsel upon the following facts: For a number of years, a theater had hired a local orchestra to play in its "pit" when its current stage attraction did not carry an orchestra. However, when its stage at-

traction was a traveling band, the theater paid the regular "pit" orchestra for the time, although no work was actually performed by its members. After the passage of the act, the theater insisted that continuation of such practice would be a violation. The "pit" orchestra demanded full pay under such circumstances, but offered to play overtures. Whereupon the theater canceled the appearance of the traveling band, and filed a charge. The general counsel, in authorizing complaint, decided that playing overtures were not "services" within the meaning of the act, and that payment was being sought for something the employer did not need, did not want, and could not use.

A case in which the general counsel refused to issue complaint was reviewed by a witness in the committee's hearings (pp. 551–555). Briefly stated, the facts in this case were as follows:

A children's theater group leased an auditorium in which to show its plays. During the first season it paid nine stage hands although, allegedly, this number of workers was more than was necessary. After passage of the act, the theater group tried unsuccessfully to reduce the number of stage hands, and finally notified the union that it did not need its services because of having hired several high-school boys to do the work. The union stage hands appeared and performed the work. The general counsel dismissed the charge because the auditorium, rather than the employer, was the employer of the stage hands, and because the men performed services.

In another case, a radio station had for several years contracted with the musicians' union to regularly employ 11 union members. After passage of the act the employer declined to enter into a new contract binding it to employ 11 musicians, insisting that such action would be a violation. The general counsel refused to issue complaint, believing that union insistence that the employer hire a certain number of musicians, regardless of its needs and regardless of their identity, is not a violation.

The *Cement Finishers Local 627 case* (21–CB–69) received considerable publicity. The union admitted having demanded and received compensation at overtime rates for six men for work actually performed by two, and entered into a stipulation for a Board order providing that it reimburse the employer for any money "exacted for services which were not performed."

Another trial examiner dismissed an alleged violation of section 8 (b) (6) in the American Newspaper Publishers' case against the International Typographical Union (9–CB–5). The charge in this case was based upon the practice under which newspapers had been required by their contracts with the union to reproduce certain advertisements after they have already appeared in the newspaper. The general counsel contended that such reproduction work could not be considered "services," since it involved no benefit to the employer. The type was set, proofread, corrected, and then consigned to the wastebasket under this practice. The trial examiner found the provision not to apply to a situation where the employees do render substantial services, and the work objected to is merely a small incident of the employment. However, it was work which the employer did not want, did not need, was not willing to accept, and was of no value to him.

The general counsel has apparently taken the position that union insistence upon a greater number of employees to perform a given job than the employer desires is not a violation. If all of the workers insisted upon by the union actually do some work, although the work could obviously be performed by a lesser number of employees, it is payment for services performed. Various litigants have insisted that the employers' wishes should be the sole determination, and that any insistence by the union for a greater number of employees than the employer wishes to hire is a violation. This view does not take account of a union's responsibility in seeking to protect the health and safety of its members, or, for example, the musicians' union's desire to insure the quality of the music produced by having a sufficient number of musicians.

However, there are cases where union insistence upon a wholly unjustifiable number of employees to perform a job is inexcusable. Perhaps it will require an amendment to the words of the provision to cover such cases. The committee recommends a continuing study of cases arising under the present featherbedding provision, since there has not been sufficient experience upon which to base intelligent amendments at this time. The two trial examiners' opinions cited, if accepted by the Board, would drastically reduce the effectiveness of the provision.

The United States Courts of any Territory or Possession

A recent charge alleging a violation of section 8 (b) (4) (D), with the unfair labor practice occurring in one of the Territories, has raised a question as to the jurisdiction of a Territorial court to hear a petition for a restraining order under section 10 (l). Section 10 (l), like section 10 (j), empowers "any district court of the United States (including the District Court of the United States for the District of Columbia)" to issue injunctions at the initial stage of certain unfair-labor-practice cases.

Section 11 (2) of the act, which deals with judicial power to issue orders enforcing subpenas, and section 302 (e), dealing with restrictions on payments to employee representatives, both specifically confer jurisdiction on the United States courts of any Territory or possession as well as the regular district courts and the one for the District of Columbia. Does the omission in sections 10 (j) and (l) operate to prevent injunctive relief under these sections in the Territories? A recent decision of the Ninth Circuit, while not exactly in point, adds to the doubt of jurisdiction (*International Longshoremen* v. *Wirtz*, 917 L. W. 2159, Oct. 19, 1948).

The committee has checked the congressional history and can find nothing which explains the discrepancy in treatment. No valid reason appears for not permitting the Board to apply to the Territorial courts for section 10 (j) and 10 (l) injunctions. The committee, therefore, recommends the insertion of the words "and the United States courts of any Territory or possession" in both section 10 (j), and 10 (l), after the word "Columbia."

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Strike During Contract Under Section 8 (d)

The committee has had numerous inquiries from both labor and management groups, and several conferences with each, regarding the application of section 8 (d) to various factual situations. The problem of interpretation can best be illustrated by citing a factual situation.

A labor-management contract for a 2-year period contains a provision permitting its reopening by either party on 60 days' notice after 1 year. The union exercises its rights under the reopening provision and discussion fails to produce an agreement. The union then strikes, having given a 60-day notice under section 8 (d), and followed the requirements of its contract, which did not contain a "no strike" clause. Has the union violated section 8 (d)?

Section 8 (d) (1) provides:

> That where there is in effect a collective-bargaining contract * * * the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification * * *

The application of this section, standing alone, to the hypothetical case outlined above would seem to permit the strike.

However, section 8(d)(4), further spelling out the duties of the parties, requires that the party—

> continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of 60 days after such notice is given or until the expiration date of such contract, *whichever occurs later* * * *.

The italicized phrase "whichever occurs later" when applied to the hypothetical case, would appear to require that there be no strike until the end of the contract, which is 10 months later than the end of the 60-day notice period.

Reading section 8 (d) as a whole seems to lead to the conclusion that the act permits a strike, after a 60-day notice, in the middle of a contract which authorizes a reopening on wages. Use of the words "or modify" and "or modification" in the proviso, and use of "or modification" in section 8 (d) (1), and the statement in the final paragraph of the section that the parties are not required to agree to any modification effective before the contract may be reopened under its terms, all seem to contemplate the right of either party to insist on changes in the contract if they have so provided. The right of the union would be an empty one without the right to strike after a 60-day notice.

The Board has not had occasion as yet to pass upon the problem, but it has been raised in several cases in the initial stage, and the general counsel has had to determine whether to issue complaint under section 8 (b) (3) where a union has struck prior to the end of a contract. In one case with facts similar to those in the hypothetical case cited above, the General Counsel refused to issue complaint. A complaint has recently issued in *Wilson and Company* (2–CB–75) in which there is an important distinction in the facts. In the Wilson case a strike was called after giving the 60-day notice under section 8 (d) but before the time permitted by the reopening clause of the contract. Allowing the usual time for processing the case, it will be 1 year before the Board's interpretation may be obtained and perhaps 2 years before a court decision.

Since the words of the statute are susceptible to opposing interpretation, and it is a matter of extreme importance to both management and labor (it should be noted that the section applies likewise to employers in prohibiting a lock-out), the committee recommends to Congress that the intent be clarified.

If Congress wishes to permit strikes in support of demands during the periods of reopening provided for in contracts, it may do so by amending section 8 (d) (1) to read as follows:

> Serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date *or such contract contains* reopening provisions for purposes of modification, sixty days prior to the time it is proposed to make such termination or modification. * * *

Then to resolve the conflict with section 8 (d) (4), a period might be inserted after the word "given," with the remainder of the sentence stricken out.

There is another possibility which should be considered if serious thought is given to amending section 8 (d). Many contracts, especially those for short terms, do not contain provision for reopening. If it is the desire of Congress to merely provide a 60-day "cooling off" period, and to permit a strike at any time after the required notice, the amendments suggested above would not suffice. In addition to the elimination of the words after the word "given" in section 8 (d) (4), the elimination of the words "in the event such contract contains no expiration date" would be necessary.

The committee has noted an increasing demand by labor organizations for short-term contracts, and for contract provisions permitting the right to cancel the entire contract on a 60-day notice, with the stated reason being the questionable nature of the right to strike during a contract term. In order that the parties may better know their rights in the matter, the committee recommends the adoption of the amendments which would permit a strike or lock-out after a 60-day notice in support of demands they have anticipated in a reopening clause.

Restrictions on Political Expenditures

Section 304 of the act makes it unlawful for any corporation or labor organization "to make a contribution or expenditure in connection with" any Presidential or congressional election, or any primary or convention to select candidates for such offices. The Department of Justice is the agency charged with the duty of prosecuting violations of the section. The provision is an amendment to section 313 of the Federal Corrupt Practices Act, the original section having been enacted in 1907 and amended in 1925, 1943, and finally in 1947.

In the committee's report of March 15, 1948, we discussed the historical background of this provision and pointed out that the statutory limitations upon campaign contributions have been almost without test in the courts. In *U. S.* v. *CIO and Philip Murray* (335 U. S. 106 (1948)), the Supreme Court provided an answer to the frequently

made allegation that the restriction would "gag" union newspapers during political campaigns (93 Congressional Record, 6436–6440). The Supreme Court held that the section did not apply to the publication and distribution, during an election campaign and with union funds, of a union weekly newspaper containing a front-page statement urging all union members to vote for a particular congressional candidate. The Court dismissed the indictment on the ground that the acts charged were not prohibited by the section.

There has been only one other case decided under section 304 (*U. S. v. Painters Local Union No. 481*, 79 F. Supp. 516). Here the indictment charged a local union with having expended union funds to pay the cost of an advertisement in a commercial newspaper of general circulation and of a radio broadcast over a local radio station advocating the defeat of certain candidates during a political campaign. The court held that the union was guilty of violating the section and that the section was constitutional. The latter ruling was made in the face of claims that the section violated the first, fifth, sixth, ninth, and tenth amendments. The court stated that Congress had the power to maintain the purity and freedom of elections and that it might do so by curbing the political power of aggregations having also great economic power. The case is now on appeal before the United States Court of Appeals for the Second Circuit.

Unlike the Philip Murray case, where a union newspaper was involved, the Painters Local case involved a situation where a union used its funds for political purposes by purchasing radio time and advertising space in a paper of general circulation.

The Department of Justice has informed the committee that it is presently conducting investigations in about six other cases, but that these have not reached the indictment stage. The Department does not investigate any case except upon receipt of a complaint. Complaints by persons alleging that they have been compelled to make contributions to a political, educational, or similar fund are not investigated, or processed, as violations of section 304 on the theory that there is no violation of that section until there is a contribution or an expenditure in connection with a political campaign by the labor organization.

That the Department does not investigate any case except upon receipt of a complaint seems to be substantiated by what has happened. The press reported that on October 24, 1948, the president of a well-known labor organization spoke over a national radio hook-up on time paid for by his union, commenting unfavorably on the record of one political party, but without making statements in support of any person or party. It was further reported that this was done on the theory that section 304 applies only to contributions and expenditures *for* candidates. The Department of Justice reports that it has not investigated the case since it has received no complaint concerning it.

In enacting restrictions on political contributions the various Congresses which have modified the restrictions from time to time have stated their purpose to be twofold. They realized that both corporate and union funds, which belong to stockholders and members, could be improperly diverted to political ends, and their use in furthering

the legitimate purposes for which the corporation or union was formed thus precluded. They wished to prevent this possible improper diversion of funds by corporate or union officers. They also wished to remove the possibility of strong and improper influences being brought to bear on elections by excessive contributions. Use of corporate assets or general union funds in support of a political party or a candidate obviously is use of such funds for purposes to which a portion of the stockholders and union members are opposed. Substantial contributions by corporations or labor organizations may give them undue influence and control over successfully supported candidates. While the experience with the act's amendments to the Federal Corrupt Practices Act has been too limited to now evaluate their merit, the committee believes the subject of such contributions should continue to have the close attention of Congress.

Guards

Section 9 (b) (3) provides that the Board shall not include guards in a collective-bargaining unit with other employees, and that it shall not certify as a representative of guards any union which admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

The committee believes that the intent of Congress with respect to this provision was correctly stated in the minority opinion in *Radio Corp. of America* (76 N. L. R. B. No. 115) when they said:

> The legislative history demonstrates and we do not believe that our colleagues deny that the Congress was concerned with the possibility that if guards were included in production units their loyalty to fellow union members might conflict with their duty to report to their employer derelictions of duty or violations of rules by employees.

In a series of cases the Board has defined the application of section 9 (b) (3) to specific cases and facts as they presented themselves. In *Schenley Distilleries, Inc.* (77 N. L. R .B. No. 80, 22 LRRM 1040), it refused to certify a union organized for the sole purpose of representing plant guards because it was affiliated with the AFL. It declared that the union was ineligible for the reason that it was "indirectly" affiliated with organizations which admit to membership employees other than guards. To the same effect: *General Motors Corp.* (77 N. L. R. B. No. 161, 22 LRRM 119). On the other hand, a union representing only plant guards which had disaffiliated from an international union representing production and maintenance workers and from the CIO was declared eligible for certification as a bargaining agent for guards, since it was no longer affiliated "directly or indirectly" with any organization admitting to membership employees other than guards (*Chrysler Corp.*, 79 N. L. R. B. No. 67, 22 LRRM 1294; *General Motors Corp.*, 80 N. L. R. B. No. 68, 23 LRRM 1082). In the converse situation, however, a union seeking representation of production and maintenance employees is not ineligible for certification because it is affiliated with an organization already representing guards (*E. R. Squibb & Sons*, 77 N. L. R. B. No. 14, 21 LRRM 1336).

The Board has found that the following employees are guards: Plant-protection patrolmen, who although they wear uniforms and

badges are not armed or deputized, who patrol the plant and are posted at various stations for the purpose of enforcing the employer's rules and regulations, and who report violations (*General Motors Corp.*, 80 N. L. R. B. No. 68, 23 LRRM 1082; *Chrysler Corp.*, 79 N. L. R. B. No. 67, 22 LRRM 1394).

Gatemen, gangplank men, hatch watchmen, ship deck patrols, and men who watch cargo on docks, *Young Patrol Service* (75 N. L. R. B. No. 51, 21 LRRM 1046).

Watchmen, who are not uniformed, armed, or deputized, but who patrol the plant and enforce rules designed to prevent fire, theft, or other damage to the employer's property (*C. V. Hill & Co.*, 76 N. L. R. B. No. 24, 21 LRRM 1172).

Watchmen, who protect the plant against fire and theft, and protect the safety of persons on the premises (*Macungie Silk Co.*, 75 N. L. R. B. No. 88, 21 LRRM 1077).

Gatemen who check employees' badges and other persons in and out of plant, *Clark Thread Co.* (79 N. L. R. B. No. 71, 22 LRRM 1426).

Watchmen, *Allen B. Dumont Lab., Inc.*, 77 N. L. R. B., No. 17, 22 LRRM 1009.

Fire-protection employees

In *Chrysler Corp.* (70 N. L. R. B. No. 67, 22 LRRM 1394), the Board held that "fire marshals" who make inspection patrols throughout the plant for the purpose of assuring adherence to safety rules and no-smoking rules in restricted areas, are guards. It made a like determination in *General Motors Corp.* (80 N. L. R. B. No. 68, 23 LRRM 1082), but in *Carbide & Carbon Chemicals Corp.* (79 N. L. R. B. No. 16, 22 LRRM 1368), and in *Carbide & Carbon Chemicals Corp.* (79 N. L. R. B. No. 112, 22 LRRM 1463) the Board held that fire-protection employees were not guards. In the last case cited, the employees involved were, in the Board's words, "Primarily engaged in preventing and fighting fires," yet they spent "a major part of their time patrolling buildings, primarily to detect fire hazards, but incidentally to apprehend persons who lack proper identification." On occasion and in emergencies they also acted as regular guards. In another case, *Standard Oil Co.* (79 N. L. R. B. No. 203, 23 LRRM 1019), the Board held that fire inspectors at an oil refinery who inspected equipment and reported infractions of fire rules to supervisors, and who had authority to act themselves in cases of emergency, were not guards. It is difficult to square this last decision with the basic purpose of section 9 (b) (3), namely the avoidance of double loyalty. A fire inspector's duty to report infractions of fire rules may very well conflict with his loyalty toward his fellow union members.

Part-time watchmen

The Board has held that employees who spend less than 50 percent of their working time as watchmen are not guards within the meaning of section 9 (b) (3) (*Radio Corp. of America*, 76 N. L. R. B. No. 115, 21 LRRM 1250; *Steelweld Equipment Co.*, 76 N. L. R. B. No. 116, 21 LRRM 1252). Thus, in the first case cited, employees who spent 1 week per month as watchmen and the other 3 weeks as janitors were held not to be guards. Two members of the Board dissented

on the ground that the policy considerations which prompted the enactment of section 9 (b) (3) were just as applicable in the case of part-time watchmen. They pointed out that during the time these employees acted as watchmen, the possibility of a conflict of loyalty was present.

Guards who guard the property of their employer's customers

In *Brink's, Inc.* (77 N. L. R. B. No. 189, 22 LRRM 1133), the Board held that armored-truck guards who guard the property of their employer's customers are not guards within the meaning of section 9 (b) (3). The Board reasoned that the section refers to persons employed to guard the "employer's" premises and not to persons employed to guard property of the employer's "customers." In other words, the Board confined section 9 (b) (3) to "plant" guards. In an earlier case, without discussing the distinction, the Board came to the opposite conclusion. In *Young Patrol Service* (75 N. L. R. B. No. 51, 21 LRRM 1046), the Board held that the employees of Young Patrol Service were guards within the meaning of the section although they guarded property of other employers who contracted with their employer for their services.

The Board has adopted the test in all cases that to be classified as a guard, an employee must spend a predominant amount of his working time performing the duties of a guard. The committee recognizes that the Board must be watchful to prevent an unscrupulous employer from reducing the size of the bargaining unit by assignment of rank-and-file employees to part-time guard duty. Such conduct, however, may be stopped as being an unfair labor practice. The committee does not believe that the drawing of a mathematical line at 50 percent of working time satisfies the purpose of section 9 (b) (3). Again we are in agreement with the statement of the minority in the Radio Corp. case already quoted which went on to state:

> **But we find ourselves unable to grasp or accept a process of reasoning which concludes that the congressional purpose to eliminate the possible conflict of loyalty which exists during the week each month that these employees work as watchmen, may be ignored because in three other weeks they work in a position where no conflict of loyalty can exist.**

Unaffiliated Unions

The second proviso of section 10 (c) of the act provides that in cases charging violation of section 8 (a) (1) or (2) the Board shall apply the same rules and regulations irrespective of whether the labor union involved is affiliated with a labor organization national or international in scope. Section 9 (c) (2) provides that the Board shall apply the same rules and regulations in representation cases irrespective of the identity of the party filing the petition and that the Board should not deny a labor organization a place on the ballot by reason of any order with respect to such organization which was not issued in conformity with section 10 (c).

By these provisions Congress intended to change the Board's rules of decision which discriminated against unaffiliated unions. (See S. Rept. 105, 80th Cong., pp. 12, 13.) When the Board found employer

domination of a labor organization it ordered complete disestablishment if that labor organization were unaffiliated and merely withdrawal of recognition until certification by the Board if the labor organization was an affiliated one.

Considerable attention was focused upon the first case involving employer domination decided by the Board. If the Board ordered disestablishment of the unaffiliated union involved, similar treatment of the first case involving an affiliated union appeared to be necessary. In that first case the Board announced its policy under the amendments (*Carpenter Steel Co.*, 76 N. L. R. B. No. ——). Under the announced policy, the disestablishment remedy is retained. If the Board finds that a union has been dominated by an employer, it will order disestablishment. If it finds that the employer's activities were limited to interference and support of a particular union and never reached the point of domination, it will order the employer to cease its interference and support and to withhold recognition until the union is certified. The Board stated that these determinations will be made without regard to whether the union involved is independent or affiliated with a national or international organization.

In the cited case the Board found that the employer's activities constituted domination of the unaffiliated organization and ordered that it be disestablished. In another case decided on or about the same day the Board found that the employer interfered with the formation and administration of the unaffiliated union involved, but that his conduct did not amount to domination. The Board ordered the employer to withhold recognition, but did not order disestablishment (*Hershey Metal Products*, 76 N. L. R. B. No. ——, 21 LRRM 1237).

Since these two cases, the Board has decided eight involving the same question. In each, the labor organization involved was unaffiliated. See *Vogue-Wright Studios*, 76 N. L. R. B. No. 111, 21 LRRM 1246; *Rathbun Molding Corp.*, 76 N. L. R. B. No. 149, 21 LRRM 1277; *Kresge Dept. Store*, 77 N. L. R. B. No.—, 21 LRRM 1345; *Wrought Iron Range Co.*, 77 N. L. R. B. No. 85, 22 LRRM 1050; *Red Arrow Freight Lines, Inc.*, 77 N. L. R. B. No. 144, 22 LRRM 1095; *Fontaine Converting Works, Inc.*, 77 N. L. R. B. No. 216, 22 LRRM 1149; *Clark Phonograph Record Co.*, 78 N. L. R. B. No. 8, 22 LRRM 1163; *Kelco Corp.*, 79 N. L. R. B. No. —, 22 LRRM 1445).

Domination was found and disestablishment ordered in all these cases except Fontaine Converting Works, Inc., supra. (Domination was found, but disestablishment was unnecessary in Kelco Corp., supra, because the unaffiliated organization was already defunct.)

The Board has yet to decide a case involving an affiliated union wherein facts supporting a finding of domination are similar to the cases cited above. The policy with respect to unaffiliated unions follows that applied under the Wagner Act. Unaffiliated unions were not disestablished upon a finding of interference and support short of domination. The employer, in such cases, was ordered to withdraw recognition until certification.

Consideration of Other Suggested Amendments

Conflicting Petitions and Charges

Most of the witnesses appearing on behalf of employer groups during the committee's hearings advocated legislation which would reverse the rule of the National Labor Relations Board that it will not process a petition through an election while there is an outstanding charge on its docket. The rule is not new, having been applied by the Board throughout its enforcement of the Wagner Act. Likewise, criticism of the rule has continued throughout its existence.

The reason and justification given by the Board for the rule is that an election conducted during or following the commission of an unfair labor practice will not reflect the true choice of the employees concerning their representation. Both the Wagner Act and the present law make it an unfair labor practice for an employer to interfere with the right of his employees to self-organization. He may not restrain or coerce them in that right, dominate the administration of their organization, or discriminate against any one of his employees for the purpose of encouraging or discouraging membership in their organization. If he has done any of these things, the Board reasoned, his action shall have had an effect on the minds of his employees, which effect will continue into the voting booth. In the early days of the Wagner Act, employers argued, and even some of the courts expressed the opinion, that the holding of an election was the best means of determining whether the employer's conduct had actually interfered with the free choice guaranteed by the law. The Board has never departed from the rule except to permit the petitioning union to waive its own charge if it desires an election in spite of the alleged unfair labor practice.

The rule presented few problems under the Wagner Act when there was only one union in the picture. The union requesting an election upon being met with employer unfair labor practice reassessed the probabilities of victory and determined whether to wait until the Board had remedied the unfair labor practice, or to waive its right to object to the results of the election because of the unfair labor practice, and take a chance on winning now. As a matter of fact, some unions often filed frivolous charges after petitioning for an election. They served a twofold purpose of delaying the election until the chances of winning were more favorable, and tended to create interest as an aid to obtaining new members.

When more than one union was involved, the rule created problems even during the Wagner Act days. When a union filed its petition for an election there was often another union which it was attempting to supplant as bargaining agent or one which was also attempting to organize the same employees. If the second union believed that a delay for a week or two would help it to better match the first union at the ballot box, it could secure such delay by filing a charge and refusing to waive it. The Board attempted to meet this problem by insisting that its regional offices give priority to charges when there

was an outstanding petition. Even if the charge was entirely without foundation, the device operated to permit several weeks for additional organizing. The regional office might assign several agents to the charge and demonstrate it to be without merit within a very few days. Its dismissal of the charge, however, could still be appealed to Washington and additional time secured.

The problems have multiplied under the Taft-Hartley law because the types of petitions were multiplied. The employer and individual employees may now request an election, decertification of the recognized union may be requested, and the petition may be one for union-shop authorization. The Board has in a number of cases held that the filing of an unfair practice while a decertification petition is being processed operates to stay the decertification election (Belden Brick Co. 8–RD–5, 11). Conceivably, the way is now open for an employer to also delay an election it does not want by filing a charge against the union, although no such instance has been brought to the committee's attention.

The reason for the rule becomes more plausible when it is considered in connection with a particular charge. If, for example, the charge is made that the petitioning union is company-dominated within the meaning of section 8 (a) (2), a determination of the validity of such charge before permitting an election appears warranted. Again, consider the case of a union which wins bargaining rights and after a full year has not been able to secure a contract because the employer has not bargained in good faith. To permit an intervening union to have an election at such time and reap the benefit of employee dissatisfaction with the services of the first union does not appear advisable.

As strong a case cannot be made for the rule if the alleged violation is employer discrimination against individual employees, or general interference, restraint, and coercion. The employee in the privacy of the voting booth, remembering his employer's discrimination against a fellow employee, may be motivated to vote for the union for that very reason.

After studying the problem in all its phases, the committee believes the remedy lies more properly in administrative handling than in corrective legislation. We believe the rule should be a more flexible one, with almost unlimited discretion lodged in the regional director as to its application. While the Board may properly insist that no election be held while a charge alleging a violation of section 8 (a) (2) or (5) is pending, all steps preparatory to the holding of the election might well be taken where the regional director has reason to believe the charge is merely a delaying tactic. This might include the holding of a hearing for a Board-ordered election where one of the parties will not consent to the election.

STRIKES FOR RECOGNITION

Both the bill passed by the House of Representatives in 1947 and early committee versions of the Senate bill contained some form of prohibition against a strike for a purpose for which the act provided an administrative remedy. Such a provision would have prohibited a strike for recognition, since the labor organization has available the certification processes of the Board. The Taft-Hartley law's

only limitation upon such strikes is that provided by section 8 (b) (4) (C). The right to strike for recognition is only foreclosed when another labor organization has been certified as the bargaining representative.

A labor organization may lose an election in which it was the only union on the ballot and the next day call a legal strike to force the employer to recognize it as the bargaining agent for those employees who have just rejected it. A number of such instances have been called to the committee's attention (hearings, p. 267).

Many labor organizations have enjoyed recognition by, and contracts with, employers without ever having been certified by the Board. The employers have not first required such unions to prove their majority status in an election conducted by the Board, being satisfied to rely upon a check of membership cards, dues records, or other proof that they were the choice of the majority of the employees. A union seeking to supplant one of these uncertified bargaining representatives may call a strike for such purpose without violating section 8 (b) (4) (C). This was the situation in the recent *Perry-Norvell Co. case* (9–CB–3), in which an uncertified union held a contract with the employer and another union struck for bargaining rights.

Present law in no way limits the primary strike for recognition except in the face of another union's certification. It has frequenly been suggested that section 8 (b) (4) (C) should be broadened to cover the situations where another union has been recognized, or has a contract, and where the striking union has failed to win recognition at the ballot box. A fairly good case can be made for such an amendment. It would not go as far as the suggestion prohibiting strikes for purposes for which the law provides an administrative remedy, for the union seeking bargaining rights in an unorganized shop might still strike for it.

There are two factors which might be considered in connection with any further restrictions upon recognition strikes. The first is the time element involved in acquiring bargaining rights by the orderly procedure provided by the act. If the employer will not consent to an election, it now requires an average of 84 days to dispose of a representation case (hearings, p. 1138). It may be questioned whether or not the mere availability of an administrative remedy is sufficient to restrict the right to strike. Perhaps the remedy should be prompt as well as available.

A second consideration arises out of the fact that section 9 (c) (3) limits elections to one in a given year. A labor organization which loses an election and strikes for recognition the next day or the next week may be condemned for such action, but there may be equities militating against it having to wait a whole year. The situation may arise where some action by the employer, or a more successful organizing campaign, causes the union to acquire an overwhelming majority within a few weeks following an election in which it has been rejected by the employees.

The committee believes that further experience with the act is advisable before consideration is given to broadening section 8 (b) (4) (C). The committee questions, however, the very narrow construction that the Board is apparently placing on this section. The dismissal of a recent matter involving Recipe Foods, Inc., is a case in

point. Union No. 1 had been certified by the Board over 2 years ago, and its contract with the employer still had a short time to run when union No. 2 petitioned for an election. During the hearing upon its petition, union No. 2 withdrew from the hearing and called a strike for recognition. A charge alleging a violation of section 8 (b) (4) (C) was filed. On these facts the case appeared to clearly fall within the prohibition of the section. The charge was dismissed by the general counsel on the ground that the certification of union No. 1 had lost its vitality.

The general counsel's dismissal does not indicate whether the certification had lost its vitality because of the 2-year period or because it had been challenged by the petition of union No. 2. Since the Board has generally held that a certification is good until the Board itself has determined otherwise, the length of time here involved would not seem to be important. If validity stopped upon the filing of the intervening petition, the theory would seem to permit the wrongdoer to take advantage of its own action. Section 8 (b) (4) (C) could be nullified and bypassed by the filing of a petition before striking against a certification.

While the Board itself has not had occasion to interpret this section of the statute, there is an indication from language used in the second *Advance Pattern case* (20–RC–116) that its thinking would follow that of the general counsel. Referring to certification as used in section 8 (b) (4) (C), the Board uses the words "as long as it remains vital." The committee believes it was the intent of the section to prohibit a strike against the certification of another union until the certification had been voided by loss of an election by the certified union.

PROTECTION OF WITNESSES

Section 8 (a) (4) makes it an unfair labor practice for an employer—

to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act.

There is no similar provision making it an unfair labor practice for a labor organization to take any action against an employee because he has filed charges or given testimony against it under the act. A number of the Board's field agents have informed committee representatives that they have experienced great difficulty on occasions in obtaining employee testimony against a union because of the fear that the employees have of union retaliation.

While section 8 (a) (4) was taken without change from the Wagner Act and has been a part of the law for 13 years, there have been few complaints based upon its violation. This has been true because in most cases a violation of section 8 (a) (4) would also be a violation of section 8 (a) (3), and the latter provision has been used as a basis for complaint. It has, however, served a valuable purpose in assuring witnesses that they may testify without fear of employer discrimination. While section 12, making it a crime to impede or interfere with the Board in the performance of its duties, might be construed to give protection to the witness against a union, a direct prohibition similar to section 8 (a) (4) would appear to be a valuable addition to the Board's authority in carrying out its duties under the act.

STATE LAWS CONCERNING COMPULSORY UNION MEMBERSHIP

Section 14 (b) of the act provides:

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Many States now have statutes forbidding or limiting the execution and enforcement of compulsory membership contracts. Texas, for example, has prohibited union-security contracts in any form, and Wisconsin permits union-shop contracts only after they have been authorized by a vote of at least two-thirds of the employees voting, such two-thirds to constitute at least a majority of all the employees in the collective-bargaining unit.

In *Giant Food Shopping Center* (22 LRRM 1070) the Board had to decide whether or not it would conduct a union-shop-authorization election in a State which forbids all forms of compulsory unionism. Part of the collective-bargaining unit was in a State prohibiting the union shop and part in a State not having such a law. By a 3-to-2 decision, the Board refused to conduct the election in the State prohibiting the union shop, stating that the unit appropriate for bargaining may be broken up for union-shop purposes into a part where the union shop is permissible and a part where it is not.

In the committe's March 15 report, we stated our belief that section 14 (b) required the Board to give full faith and credit to any State law restricting or prohibiting union-security contracts. We recognized that it was possible to view the provision as leaving entirely to the States the enforcement of their own restrictive statutes. We pointed out, however, that such a view might result in the Board ordering an employer to bargain upon a union-shop contract even though it would be a violation of State law to enter into one.

While the decision in the Giant Food case indicated that the Board would give consideration to the law of the State in which a union-shop-authorization election was requested, a later case applies a narrow construction to the provision (*Northland Greyhound Lines, Inc.*, 18 U. A. 227). Here also a multi-State unit for collective bargaining was in existence. Two of the States involved, Iowa and North Dakota, prohibit the union shop, and Wisconsin, also involved, has the regulatory legislation referred to above. The Board followed its precedent established in the Giant Food case and refused to order the election in Iowa and North Dakota, but granted the request for an election in Wisconsin. The Board held it must honor State statutes where union-security agreements are "prohibited," but not State laws which restrict such agreements to a greater extent than the act.

In another section of this report, the committee has recommended an amendment which will eliminate union-shop-authorization elections. Adoption of such an amendment would render the decision in the Greyhound case of no importance except that the rationale of that decision might well be carried over into an unfair-labor-practice case. The Board might, for example, order an employer to bargain with a labor organization in Wisconsin or New Hampshire for a union shop when the labor organization has not complied with the two-thirds au-

thorization required by each of these States. If it was the intent of Congress that the Board give full faith and credit to State laws restricting as well as those prohibiting compulsory unionism, section 14 (b) must be amended.

THE SCOPE OF COLLECTIVE BARGAINING

Three decisions of the Board requiring employers to bargain upon subjects which previously had not generally been considered to fall within the realm of mandatory collective bargaining have received wide attention. The Inland Steel decision upon pension plans, affirmed by the Seventh Circuit, is discussed under the general subject of welfare funds. Also relating to the scope of collective bargaining are the Allison case on merit increases, and the Crompton Highland Mills case on unilateral wage increases.

The Supreme Court on October 11, 1948, refused to review a lower court's enforcement of an NLRB ruling that merit increases are an integral part of the wage structure, and, as such, are subject to collective bargaining upon union demand (*N. L. R. B.* v. *J. H. Allison & Co.*). While this case was decided under the Wagner Act, there is little in the Taft-Hartley law to substantially affect the ruling. Section 8 (d), in defining the duty to bargain collectively, states that the obligation does not compel either party to agree to a proposal or require the making of a concession, and further that neither party need discuss or agree to a contract modification during its term which is to become effective before the contract can be reopened under its own terms. Under the decision, however, it would appear that the employer must bargain upon the subject at the union's request, and if the employer grants such increases unilaterally, it must accede to the union's request for such information as the standards applied, the amounts given, and the names of the recipients. The union might then be in position to process grievances for other employees who were not given merit increases.

In the Allison case the employer had flatly refused to discuss with the union its reasons for giving 31 employees merit increases out of a total employment roll of 105 persons. The employer further took the position that merit increases were not a bargainable issue in negotiations for a new contract.

In *N. L. R. B. v. Crompton Highland Mills* (167 F. (2d) 662, C. C. A. 5), the court refused enforcement of the Board's order which found the employer to have committed an unfair labor practice by giving a unilateral wage increase. The increase was given at a time when collective bargaining had broken down, the union having withdrawn from further bargaining upon the subject and taken a strike vote. The Supreme Court granted certiorari in this case on the same day it refused to review the Allison case.

The Board has yet to consider a case brought under the Taft-Hartley law in which the two provisions of section 8 (d), cited above, are applied. The committee recommends that Congress give close attention to the Board's handling of these issues which may be outside the scope of what Congress may deem to be the field for governmental enforcement of mandatory collective bargaining.

VOTING RIGHTS OF STRIKERS

One of the restrictions upon the discretion of the Board in its conduct of elections to determine the bargaining representative is that "employees on strike who are not entitled to reinstatement shall not be eligible to vote" (Sec. 9 (c) (3)). The Board has applied this provision in two cases, *Pipe Machinery Co.* (8–R–2642) and *Times Square Corp.* (79 N. L. R. B. No. 5).

In the Pipe Machinery case, the International Association of Machinists had called a strike over economic issues in February 1947. The plant continued to operate with replacement employees, and in March 1948 the Board conducted an election on the petition of another union. The Board decided that it was required by section 9 (c) (3) to count the votes of 43 employees who had been hired to replace the strikers rather than the 43 strikers who had been replaced. To do so the Board had to first find that the 43 strikers were not entitled to reinstatement. Being economic strikers as distinguished from unfair-labor-practice strikers, and having been permanently replaced, the law was clear that they were not entitled to reinstatement.

In *NLRB* v. *Mackay Radio* (304 U. S. 333, May 16, 1938) the Supreme Court said that economic strikers who have been permanently replaced are not entitled to reinstatement. The Court reasoned that an employer guilty of no unfair labor practice under the statute has the right to protect and continue his business by filling places left vacant by strikers. To have held that the strikers could come back when they chose, and displace the replacements, would pretty much nullify the right to make the replacements for few would take such employment with tenure so limited. Such a result would have made it almost impossible for a labor organization to lose an economic strike.

Section 9 (c) (3) does not apply when the strike is called in protest of an unfair-labor practice committed by the employer. If, for example, a strike is called because the employer has not bargained in good faith in violation of section 8 (a) (5), or has discriminated against one of the employees in violation of section 8 (a) (3), the employer must take back the strikers upon their request, even if they have been permanently replaced.

Under the Wagner Act the Board had at one time held that the strikers rather than their replacements should vote in an election conducted while the strike was still current. At another time the Board permitted both the strikers and the replacements to vote.

The election is to determine the bargaining representative for the ensuing year. The justification for the amendment made by section 9 (c) (3) is that those workers who will be in the plant during the coming year, rather than the strikers who have no right to reinstatement, should vote to determine the representative.

PREHEARING ELECTIONS

In administering its duties under the Wagner Act the Board conducted two types of elections. If all parties were in agreement as to the appropriate unit, eligibility of voters, and time for conducting the election, a consent agreement in which the parties waived their

rights to a hearing was usually entered into. This procedure disposed of at least two-thirds of the election cases. When the parties could not agree upon one or more of the issues a hearing was held and upon the record made therein the Board decided the issues and ordered the election. The Wagner Act, as well as the Taft-Hartley Act, guaranteed the right to a hearing.

In 1945 the Board amended its rules and regulations to authorize its regional directors to conduct elections either before the hearing or after the hearing and before Board order in cases which present no substantial issues. The right to the hearing which the statute provided was still preserved in that the hearing was still held after the election if any party still insisted upon it.

The Taft-Hartley Act eliminated this device of prehearing elections by rewriting section 9 (c). The consent election procedure was preserved, however, and still accounts for the disposition of the majority of election cases. During the committee's hearings various union representatives recommended an amendment which would make it possible for a return to the prehearing election device. They pointed out that it would relieve the work load of the Board if it were possible for it to delegate this portion of its responsibilities to the field office. It cannot be denied that there would be less use of a hearing purely as a delaying tactic if the regional director could eliminate the delay by holding an immediate election.

The prehearing election procedure appeared to work well in some sections of the country and was frequently used. In other regions employers were antagonistic to its use. They insisted that their rights to a hearing had been violated by granting them a hearing to determine whether there should be an election and who should vote after the election had been held. They further insisted that the Board could not fairly decide the issues after the election and would tend to merely approve what had already been done. A few employers still insisted on the hearing and then refused to bargain, putting the Board to the further time and expense of an unfair-labor-practice hearing. It also created difficulties with unions. If, for example, the regional director granted a prehearing election to a CIO union in a simple case and later denied an AFL union's similar request in a more complex case, he was accused of being pro-CIO. In some regions the prehearing election procedure had almost no use.

While the prehearing election procedure did not account for any sizable proportion of the Board's election cases, the Board's statistics do indicate that the percentage of representation cases going to formal hearing dropped appreciably after adoption of the procedure. It is questionable that the decline in hearings was entirely attributable to the new device.

The committee recognizes the value of speedy determination of representation matters. We are confident that this may be accomplished without denying to the parties their right to a hearing before the election is held.

APPEAL FROM DISMISSAL OF CHARGES

The general counsel has been given final authority in respect to the issuance of complaints (sec. 3 (d)). If a charge is dismissed in a regional office for lack of merit, insufficiency of evidence, or any other ground, the charging party may appeal such dismissal to the general counsel. The practice differs from that applied under the Wagner Act in that, under the former law, the appeal was to the Board.

The appeal procedure has been criticized at various times and the criticism has usually been occasioned by its existence in connection with the "advice" procedure. In order to secure uniformity among the various regions the general counsel has required the regional directors to submit an analysis and brief of the facts of a case to him for advice before taking the formal action of issuing complaint or dismissal. Since they were administering a statute which was in many respects new, it appeared necessary in the early stages to provide such supervision from Washington.

Parties complain that they have not been accorded a true appeal from a dismissal when the appeal is decided by the same officer who determined and ordered the dismissal in the first instance (hearings, pp. 555–556). While the complaint is not without justification, it overlooks the fact that on appeal the appealing party has been informed of the reasons for dismissal and has an opportunity to point out additional facts and argue points of law which may and frequently have resulted in a reversal of the dismissal.

The committee has learned that the general counsel has now given greater discretion to the regional directors on dismissals and issuance of complaints, and as further experience is gained, will give them greater authority until they will operate virtually upon their own initiative in these respects. This will to a great extent eliminate the complaint that the right of appeal is not a real one in practice.

A return to the Wagner Act practice of appeal to the Board itself would of course require the Board members to pass upon matters at the initial stage which they must later determine after all of the facts have been presented to them. It would destroy to a great extent the separation of functions which the act attempted to make and again burden the Board with many of the details of administration from which it was relieved that it might have more time for its function of deciding cases. As a practical matter, it would provide no more real appeal since presumably the Board would revert to its former practice of delegating the function of review of appeals to an anonymous group of staff attorneys.

CHECK-OFF OF INITIATION FEES AND ASSESSMENTS

Section 302 of the act imposes criminal penalties applicable to employers as well as unions and their officers for violation of the limitations which the section places upon the check-off to the union of any portion of any employees' wages. The relevant portions of the section are as follows:

> (a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
>
> (c) The provisions of this section shall not be applicable with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than 1 year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner.

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Following the enactment of the law as labor-management contracts came up for renewal, employers took the position that they could not check off initiation fees and fines and special assessments since the statute used the term "membership dues." They pointed out that the act differentiated between initiation fees and dues in other sections (sec. 9 (f) (4) (5)).

A controversy also arose as to whether a check-off clause could be automatically renewed if an escape clause was included. Some employers insisted that the check-off would be irrevocable for longer than the year or the period of the contract which the contract provided if it required an affirmative act on the part of the employee to revoke it.

While no action has been brought by the Department of Justice based upon a violation of this section, and the Attorney General has not given an official opinion, the thinking of that Department has been expressed in a letter dated May 13, 1948, to the Solicitor of the Department of Labor signed by the Assistant Solicitor General. Since that letter received considerable circulation and publicity and has played an important part in collective bargaining on the subject of check-off, a copy is included in the appendix to this report.

The Assistant Solicitor General stated his opinion to be that the term "membership dues" includes initiation fees and assessments as well as regular periodic dues. He further stated that an employer was not prohibited from honoring a written check-off authorization signed by an employee which provides that it may be revoked within a designated period prior to the end of each year, but if not so revoked shall continue to be irrevocable from year to year until revoked during the period designated for annual revocation.

Since this opinion was given, a considerable number of employers have yielded to union requests for a renewable check-off clause which covers assessments and initiation fees as well as dues. The committee believes that the opinion of the Assistant Solicitor General does not follow the congressional intent of the provision, and the law should be amended to so state.

Mass and Coercive Picketing

In *Sunset Line & Twine* (79 N. L. R. B. 207) the Board, for the first time, considered the application of section 8 (b) (1) (A) to mass and coercive picketing . This section made it an unfair labor practice for a labor organization, or its agents, to restrain or coerce employees in the exercise of the rights guaranteed in section 7. In section 7 the Wagner Act had guaranteed the right to self-organization, to form, join, or assist labor organizations, and to engage in other concerted activities for the purpose of collective bargaining. The Taft-Hartley Act amended section 7 by adding the right "to refrain from any or all such activities." The Sunset decision in effect says that employees desiring to do so have the right to go to and from work without restraint or coercion.

Another case now awaiting Board decision *Cory Corporation* (13–CB–5) should further spell out the limitation of the act on mass picketing. In the Cory case, a trial examiner held that even though the picketing is peaceful, the number of pickets alone may have an intimidating effect upon employees desirous of going to work, and thus

be coercive and a violation of section 8 (b) (1) (A). The picketing was conducted by between 80 and 200 pickets patrolling the 80-foot front of the plant in a circular course over a sidewalk 8 feet wide.

Picketing is usually justified as an exercise of rights of free speech and freedom of assembly guaranteed by the first amendment. The right of striking employees to inform the public, their fellow workers, and prospective new employees, of their grievances with their employer and by peaceful means seeks to persuade them not to do business with or go to work for that employer cannot be questioned. Picketing exceeds the constitutional guaranties when it is extended beyond peaceful persuasion, and by force or physical violence or threat of such, prevents access to the place of employment of the employee who desires to go to work.

Considerable evidence of mass and coercive picketing was introduced in the hearings conducted by both Houses of Congress prior to enactment of the Taft-Hartley law. In the bill passed by the House of Representatives, mass picketing was made unlawful. The injured party was given an action for damages and the right to injunctive relief without regard to the Norris-LaGuardia Act, and employees engaging in such conduct lost all rights under the act. The conferees adopted the amendment passed by the Senate. While no attempt was made to define mass picketing in terms of numbers, the committee believes it was the intent of Congress to allow only such picketing as is reasonably necessary to give notice of a labor dispute. This leaves to the Board the discretion to determine on a case-by-case basis whether the picketing amounted to restraint or coercion.

The committee has noted an increase in mass and coercive picketing during the past year. Where there has been a back-to-work movement during a strike, it has almost always been accompanied by reinforced picket lines at the gates to prevent access to the job.

While hearings conducted by this committee did not go into the problem of mass picketing to any extent, several committees of the House of Representatives have investigated the subject since passage of the Taft-Hartley Act. A subcommittee of the House Committee on Executive Expenditures conducted hearings confined to this subject during the summer of 1947. The House Committee on Education and Labor held hearings on "the right to work" in the spring of 1948. Again, in May of 1948, a subcommittee of the House Committee on Executive Expenditures held hearings in various States during the progress of the general strike in the meat-packing industry. A considerable portion of the most recent hearings on the subject of communistic influence in labor organizations was devoted to mass picketing and violence on the picket lines.

The committee's staff has studied the records made in the hearings mentioned above and at times attended the hearings as observers. We have observed one factor running throughout these hearings—the inadequacy of local and State laws, or of their enforcement, to protect the right to work during a strike. In some instances the picketing amounted to outright plant seizure. Supervisors and top management were denied access to the plants as well as rank-and-file workers. In one incident, cited below, the strikers invaded the plant and forcibly ejected employees who had continued at work. That the provision of the present law has not yet operated as an effective deterrent has been

fairly well established by the hearings conducted since passage of the act.

Hearing at Clinton, Mich., October 15, 1947, House Committee on Education and Labor

On August 11, 1947, following a 2-week-old strike called by local 608, UAW–CIO, the Clinton Machine Co. reopened its plant. As the people who wanted to return to work approached the usual plant entrance where the time clocks were located, they were met by a revolving squirrel-cage type of picket line. There were about 75 to 100 in the picket line, with the pickets 3 to 4 feet apart. Some in the picket line were employees of the Clinton Machine Co., some were not. The president of the company, upon seeing the entrance blocked, attempted to go around the end of the line. The pickets charged him and the employees trying to get into the plant, with the result that fighting broke out. The president of the company was knocked down, and several of those trying to go back to work were injured. The fight continued around the entrance to the plant, and was broken up only after a plant guard fired two shots into the air. Those trying to get into the plant went on in, while the pickets re-formed their ranks, yelling and hurling abuse at the plant guard who fired the shots and at the individuals that had gotten into the plant.

The president of local 608, UAW, admitted in the course of the hearings that the purpose of the picket line was to keep people from going into the plant. When the pickets saw the employees that wanted to work going around the end of the picket line, they charged them to prevent their getting into the plant.

While the president of the company had asked for protection on the previous day for those employees desiring to return to work, there were no policemen at the plant entrances on Monday, when the back-to-work movement took place.

After the local was rebuffed in its initial attempt to stop workers from getting into the plant, a sound truck blared away threats to "get them when they came out for lunch." Threats were made over the sound truck to "pull out" those working inside the plant. While all this was going on, the number of pickets was increasing hourly, all the time becoming more abusive and vindictive. The president of local 608 admitted that it would have been dangerous for any employee to come outside the plant at that particular noon hour, or later in the day.

The picket line was being increased by more and more pickets from adjacent plants and other locals. With the situation becoming so fraught with danger, the employees stayed inside the plant that night rather than risk being beaten up. When the president of Clinton Machine Co. asked the captain of the State police for protection for the employees, he remarked that it would be impossible for his 50 or so men to control the 1,500 pickets and the crowd.

As the week wore on, the union started to send in pickets from Detroit, Toledo, Buffalo, and Adrian. On Thursday the pickets increased to 1,500 in number, and blocked off all entrances to the plant. The pickets started hurling rocks through the windows, with several women employees receiving cuts on the arm. The pickets who threw the stones were a "flying squadron" from the Auto-Lite plants in Toledo, Ohio, and Buffalo, N. Y.

"Flying squadrons" were defined as follows by Captain Scavarda, of the Michigan State Police:

> They came in here for the purpose of taking part in this mass picketing. As they would come into the picket line, they had either banners—some of them carried flags with the designation of their local, designating who they were; the greater number of them had cap ornaments that also designated who they were. As they went into the picket line the leader of that particular local would go to the loudspeaker and say that "the flying squadrons or picket members of local so-and-so are now entering the picket line.

As the ranks of the pickets continued to grow, and as the noon approached some of the pickets began hurling rocks at the tables where the workers inside the plant were eating their lunch. In this regard, had it not been for the timely intervention of the State police, the car that brought the food into the plant would have been turned over. Members of the local threatened to bomb the restaurant that was supplying the plant with food.

The police roped off the streets leading to the plant area to prevent any more pickets from joining the ranks of the pickets who had grown to over 1,800.

There were two lines of pickets. They marched with their hands on the shoulder of the man up ahead, shouting and yelling abuse at those inside the plant. It was impossible to get in or out of the plant.

Hearing at Benton Harbor, Mich., October 20, 1947. House Committee on Education and Labor

On June 21, 1947, the UAW-CIO called a strike at a Remington-Rand plant in Benton Harbor employing 375 persons. On the first day of the back-to-work movement, 15 to 16 percent of the employees showed up. There were 250 pickets blocking the entrance to the plant. The sheriff was able to open a passage through the pickets to let those employees that wanted to return to work into the plant.

Three days after the back-to-work movement had started, the union threw a picket line of 1,500 pickets around the plant. The pickets blocked the gate, refusing to move to let the workers into the plant. The pickets engulfed the police through sheer weight of numbers. The pickets were finally driven across the street and away from the police when a fire hose was connected to a hydrant, and turned on the pickets.

Hearing at Dowagiac, Mich., October 23, 1947, by same subcommittee

In July of 1947 UAW-CIO called a strike at the Heddon Bait Co. The company employed a force of 268 employees in the factory. A back-to-work movement was started by the company and at the end of the first week, 50 percent of the employees were back at work.

Here again the picket line was increased to block the entrance, windows were broken, employees beaten up. A new feature in this strike was added with the complete blocking of the streets leading to the plant with the cars parked bumper to bumper.

From hearings before a subcommittee of the House Committee on Executive Expenditures in connection with the national meat-packing strike in March 1948

Pickets denied access of office employees and supervisors at Swift & Co., St. Paul, Minn., plant (pp. 4, 5, 12) turned over cars (p. 16) and used violence on supervisors attempting to gain admission to the plant (p. 19).

Pickets denied all classes of employees admittance to the Armour & Co., St. Paul plant (p. 23), ignored a State court restraining order limiting picketing (p. 34), attacked the police attempting to enforce the injunction (p. 45).

Pickets invaded the Cudahy packing plant at Newport, Minn., and forcibly kidnaped employees sleeping in the plant, beating them with clubs, physically injuring them, and destroyed or damaged plant property and equipment (pp. 59–62).

At Armours & Co., St. Joseph, Mo., pickets stopped cars, threw bricks, punctured tires, and turned over cars of employees seeking to go to work (p. 65).

At the John Morrell & Co. plant at Topeka, Kans., the pickets destroyed property, threw stones, and injured employees attempting to go to work (p. 168).

At the Wilson & Co. plant at Albert Lea, Minn., pickets turned over cars and forcibly prevented anyone from gaining admittance to the plant (p. 131).

At the Wilson & Co. Chicago plant a union leader announced to the company's employees over a sound truck shortly before the strike date:

> We are going to be the bosses, and on instructions from the international headquarters no one is going into that plant without our saying so. That means no foreman, no office workers, not even Thomas E. himself (pp. 98–99). * * * We have just one password, "They shall not pass" * * *. If you see any police around, don't pay any attention to them. Don't worry about the police. We'll take away their guns. We'll take away their stars. We'll take their clubs and rub their heads with them. All we need is numbers out here and we can handle anyone. If they send the Army, we'll bump heads with them and take care of them too. If Truman doesn't look our way, we'll take care of him, also.

If the right not to participate in concerted activities, which the law now assumes to guarantee, is to mean anything as a practical matter, some means other than the "cease and desist" remedy must be found. The worker denied access to his job by mass or coercive picketing suffers the same pecuniary loss as the one discharged by his employer because of his union activities.

One of the first cases brought under the Taft-Hartley law involved coercive picketing (*Colonial Hardwood Flooring, 5–CB–4*). The trial examiner found that the striking union's pickets had physically obstructed entry to the plant to employees desirous of returning to work, and in some instances pickets had assaulted employees at the plant gates to prevent their going to work.

The general counsel requested that the Board order the union to reimburse those employees deprived of their earnings as a result of the union's restraint and coercion. The trial examiner declined to so recommend. His ruling appears legally correct in that section 10 (c) authorizing the Board to order back pay uses the word "discrimination." Further, there is nothing in the legislative history of the act to indicate that Congress intended to authorize the Board to assess back pay against a union except in the section 8 (b) (2) cases.

Testifying before this committee, the general counsel stated that he favored an amendment which would unequivocally give the Board the discretion to order a union to make whole employees who were prevented access to their jobs by mass or coercive picketing (p. 1154, 1172). Other witnesses also favored such an amendment (907, 908).

The Board has awarded back pay almost without exception in those cases where it has found employer discrimination and the remedy has always been considered the Wagner Act's most effective deterrent against unfair labor practices. It may be argued that the union's denial of access to the job is of a temporary nature while the employer's discrimination is usually by discharge and may be permanent. However, the very temporary or indefinite nature of the union's picketing is a deterrent to the employee in securing work elsewhere and may often cause him to suffer a greater loss.

Again it may be argued that with the Sunset Line & Twine decision mass and coercive picketing will be discontinued. The only remedy under present law is a "cease and desist" order. However, if the case follows the usual course in respect to time, such an order may be obtained about 1 year following the picketing. By that time the coercive picketing has in most cases been discontinued months before. This is no relief whatsoever for those employes who were unwillingly deprived of their earnings during the strike.

It has also been suggested that the ruling of the Board in the *Socony Vacuum* case (78 N. L. R. B. 169) will go far to solve the problem. The Board held in that case that the employer may discharge or refuse to rehire any employee engaging in mass picketing which prevents the access of other workers to the job. The case may have the effect, however, of encouraging the use of pickets from other plants or professional pickets when mass picketing has been determined upon.

The committee believes that authority in the Board to require a union, guilty of mass or coercive picketing, to reimburse those employees denied access to their jobs would be a most effective deterrent. As in the ordinary discrimination cases, it should be a remedy available to the Board, to be used at its discretion where the facts warrant. The committee recommends that section 10 (c) be amended by the insertion after the word "including" in the third sentence thereof, a comma and the following: "in the case of a labor organization the payment of back pay to employees who have been deprived of their earnings by reason of such unfair labor practice, and in the case of an employer, the".

Strikes To Compel a Violation of Law

Proposals to regulate strikes conducted for the purpose of compelling employers to violate Federal and other laws were considered by the Eightieth Congress during the time the present act was being formulated. The bill as passed by the House (H. R. 3020, 80th Cong., 1st sess.) provided that a strike for recognition or to remedy practices for which an administrative remedy is available under the act or to compel an employer to violate any law shall be unlawful. As remedies for unlawful practices, it allowed a suit for damages, made provisions of the Norris-LaGuardia Act inapplicable, and deprived any person who engaged in such a strike of his rights under the act for a period not exceeding one year.

An early committee print of the Senate bill (S. 1126, 80th Cong., 1st sess.) contained a provision which would have denied the benefits of the act to any employees or labor organization which conducted a strike to compel an employer to remedy practices for which an ad-

ministrative remedy was available under the act, or to compel an employer to violate a provision of the act, or any other law of the United States.

However, during the last few months preceding enactment, the Board's decisions reflected a stiffening attitude regarding strikes conducted for unlawful objectives. Noting this change, the managers on the part of the House stated in the conference report that amendments to prohibit such activities seemed "unnecessary" (H. Rept. 510, 80th Cong., 1st sess., p. 39), and the amendments were not included in the law as finally enacted. Subsequent events have not borne out this expression of faith. On the contrary, decisions handed down since the act state without equivocation that activities conducted for unlawful purposes are not unlawful per se.

Since the passage of the act instances of strikes to compel employers to violate laws have increased. The most repeated instances have been attempts by labor organizations to impose closed- and union-shop conditions without compliance with the act's requirements therefor. Examples of these attempts, many of which have been successful, follow:

(*a*) *Typographers.*—The International Typographical Union (which is not qualified to petition the Board for a union-shop-authorization election because it has not complied with secs. 9 (f), (g), and (h) of the act) waged a campaign to impose closed-shop conditions on printers and publishers and their employees, and has conducted several strikes in support of this campaign. On March 27, 1948, the District Court for the Southern District of Indiana enjoined this union from continuing these discriminatory practices, and on October 14, 1948, on a finding that these practices were being continued, found the union in contempt. Despite this and several other proceedings against the ITU, many employers bowed to the closed-shop practices insisted upon by the union, and, without compliance with the act's provisions, have joined in this discrimination against employees (hearings before the Joint Committee on Labor-Management Relations, 80th Cong., 2d sess., pt. I, p. 581).

(*b*) *Coal.*—In the negotiations for a new bituminous coal contract for the year commencing July 1, 1948, the United Mine Workers insisted upon the retention of a clause providing that "all employees shall be, or become, members of the United Mine Workers of America," although this union had not qualified under the act for authority to enter into a union-shop contract. On June 25, 1948, to avert a strike, the so-called commercial operators agreed to such clause, admitting in a statement released to the press that it did not "conform exactly with the requirements of the law." The so-called captive-mine operators at first resisted, because, their spokesman said, "the contract proposed by the union contains a union-shop provision in violation of the law of the land." But after a strike lasting 1 week they, too, agreed to the clause. The mine workers union agreed to be bound by the court's final determination, after all appeals, on the validity of the particular clause, an obligation to which the union would be bound in any event.

(*c*) *Maritime.*—In May 1948 the National Maritime Union called a strike in support of its demand for the continuance of its hiring-hall practices on the Great Lakes, a strike which was subsequently found to be a violation of section 8 (b) (2) of the act (*Matter of National Maritime Union*, 78 N. L. R. B. No. 137, 22 LRRM 1289 (1948)).

(*d*) *Retail trades.*—Subsequent to the passage of the act, various locals of the Retail, Wholesale, and Department Stores Union, CIO, particularly locals 65 and 1250, made numerous demands, accompanied by strike threats, on several department stores in New York City for various forms of union security, although these locals had not complied with the filing requirements of the act. In some cases the employers yielded to such threats and granted contract provisions of highly doubtful validity. In an instance involving local 1250 and the store of Oppenheim Collins the employer resisted, and in August 1948 the local went out on strike. Soon thereafter a rival union filed a petition for representation, won the election, and was certified as bargaining agent. Local 1250 continued its strike as one for recognition, although it was then in violation of section 8 (b) (4) (C). Even after the strike was enjoined, the local continued to picket the store and finally on October 1, 1948, was adjudged in contempt (*Douds* v. *Local 1250*, Civil No. 47—308, Dist. Ct. S. D. N. Y., aff'd U. S. C. A. 2d, Nov. 8, 1948). In this case the strike was conducted for two unlawful purposes, first to compel Oppenheim Collins to enter into a contract providing for union security without complying with the requirements of the act, and later to compel the store to recognize it when another union was the certified agent.

It should be noted that in all four instances summarized in (*a*) to (*d*) above, the union involved had not complied with the filing requirements of the act and therefore was not qualified to seek authorization of a union-shop agreement.

Another instance of a strike to force an employer to violate the law is a strike by a minority group of employees for recognition. It seeks to deprive employees of their rights under section 7 of the act, particularly of—

> the right * * * to bargain collectively through representatives of their own choosing, and to * * * refrain from any or all of such activities * * *.

If an employer accedes to such demand, he participates in forcing his employees to bargain collectively through an agent to which a majority of them are opposed. That such a strike is not an unfair labor practice under the present act has been made clear. In *Matter of Perry Norrell* (80 N. L. R. B. No. ——, 23 LRRM 1061, Nov. 12, 1948) the Board held that a strike by a minority group for recognition, where another union was the recognized agent, did not constitute "restraint or coercion" of the employees in violation of section 8 (b) (1) (A). In other words, the Board held that the strike did not restrain or coerce the employees in the exercise of their right to choose their own bargaining representative or to refrain from choosing one, although its object was to force them to choose an agent to which a majority of them were opposed. The same doctrine was expressed in *Matter of National Maritime Union* (78 N. L. R. B. No. 137, 22 LRRM 1289 (1948)). In summary, it is not an unfair labor practice for a labor organization, unwanted by the majority of the employees it seeks to represent, to demand bargaining rights and take strike action in support thereof, but it

is an unfair labor practice for the employer to yield to such pressure and recognize the minority group.

It should be noted that wherever a union conducts a strike to compel a violation of the law, it has at its disposal a lawful, peaceful remedy to attain its objective. Thus, in lieu of a strike for recognition, it may petition the Board for an election. In lieu of illegal demands for union security, it may petition for a union-shop-authorization election by complying with section 9 (4), (g), and (h) of the act

On the other hand, an employer faced with a strike to compel him to violate the law has little choice. Either he may yield and participate in violating the law, or he must withstand the economic force exerted upon him and his employees. If he adopts the second alternative, the act may provide him a degree of assistance in some instances and in others no help whatsoever. For example, if the union demanding the illegal provision is the majority representative and entitled to bargain for his employees, it is not good-faith bargaining within the meaning of section 8 (b) (3) for it to insist on an illegal provision. If it is insisting upon the illegal closed shop it is attempting to cause the employer to discriminate against employees within the meaning of section 8 (b) (2). See *National Maritime Union* (78 N. L. R. B No. 137). The employer may file a charge and in due course, after the usual investigation, hearing, issuance of intermediate report, and review of the record by the Board, an order will issue requiring the union to cease and desist. If the case follows the usual pattern, such order will issue approximately 1 year after the beginning of the strike. If the union does not comply with the order, court enforcement may be obtained in another year or two. Expedited relief is possible under section 10 (j) under which the general counsel may, and did in the maritime and coal cases, exercise his discretion to apply to a Federal district court for an order enjoining the insistence upon and continuance of a strike to obtain the illegal compulsory-union-membership clause. However, the general counsel will not take that course unless the public interest is being affected. He will not apply for an injunction where the strike merely threatens ruination of the employer's business.

The committee believes as strongly as do the union leaders that the right to strike for legitimate objectives must be preserved. The act has imposed reasonable waiting periods upon the exercise of the right where the national health and safety have been affected and where the labor organization is seeking to modify its contract with an employer. Unions may strike to remedy an employer unfair labor practice and for recognition as the bargaining agent even though the act provides orderly peaceful remedies in both instances. Until it is possible for the Board to provide a prompt as well as orderly and peaceful remedy, it is perhaps desirable to permit strikes for purposes for which the law provides a remedy. This is not to say that it should be a protected right. If a labor organization determines upon a course of self-help to remedy an employer unfair practice or to obtain recognition, turning from the act's peaceful procedures, there is nothing unreasonable in denying it the act's protection while carrying out its own self-determined course of action. If the Congress should believe that it is sufficient remedy for strikes to compel a violation to deny the protection of the act to the labor organization and employees participating in such strike, the committee believes such protections should also be denied to unions and employees striking for a purpose for which the act provides an administrative remedy.

Such result might be accomplished by amending section 13 to read as follows:

SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right, but this Act shall not be construed as conferring any remedy under sections 7 and 8 if it is a strike, an objective of which is to compel an employer to—

(1) bargain collectively with a labor organization or other person not certified as the representative of his employees under section 9;

(2) remedy practices for which an administrative remedy is available under this Act; or

(3) violate a provision of this Act or any other law of the United States.

If the Congress agrees with the committee that the employer who refuses, at the risk of a loss of his business, to yield to a union's illegal demands is entitled to more protection than the possible deterrent provided by a loss to the participants of their rights under the act, another remedy is suggested. Various witnesses testifying before the committee recommended an amendment to section 8 (b) (4), (the secondary-boycott and jurisdictional-strike prohibitions) which would make a strike or threat of a strike any purpose of which was to cause the employer to violate the law an unfair labor practice with the remedies of priority handling by NLRB and an injunction pending Board determination (hearings, pp. 508, 267, 855, 433, 276, 159–160). This might be accomplished by the addition of a new subsection to section 8 (b) (4) as follows:

(E) Forcing or requiring any employer to violate a provision of this act or any other law of the United States.

PRODUCTION INCENTIVES

Section 402 (2) of the Taft-Hartley law directs this committee to study and report on—

the means by which the individual employee may achieve a greater productivity and higher wages, including plans for guaranteed annual wages, incentive profit-sharing and bonus systems.

In the committee's report of March 15, 1948, there were included studies of the George A. Hormel Co. and the Lincoln Electric Co.

The Hormel Co. plan is generally accepted as being the most highly developed of all the so-called guaranteed-annual-wage schemes. There, the company and the United Packinghouse Workers of America, CIO, have collaborated in a 15-year development of the annual-wage system. They have brought it to a point where not only are the employees assured of continuous employment at guaranteed minimum pay, but are also assured of a production bonus and a share in the company's profits every year. The result has been job and financial security, higher wages, greater efficiency, higher productivity, and a wider variety of products at reasonable prices to the public. It is especially significant that the union involved has grown and prospered, and that labor relations there are perhaps more stable than anywhere else in the meat-packing industry.

Unlike the Hormel situation, there is no union at the Lincoln Electric Co. in Cleveland. That company has developed an incentive which has resulted in employee income much greater than industry standards for the same work, and in steadily diminishing production costs with consequent lower prices to the public.

The committee again commends these two studies as excellent examples of what may be achieved in this field under completely different labor-management arrangements.

We have not attempted a detailed survey of other companies where incentive and profit-sharing programs are in operation, since we believe the report on the Hormel and Lincoln systems will sufficiently emphasize to management, labor, and the public the benefits to be obtained, and the methods by which far-sighted unions and management can cooperate for the ultimate advancement of all.

As a part of the committee study, members of the staff visited the operations of the Procter & Gamble Co. at Cincinnati, the Eastman Kodak Co. at Rochester, N. Y., the McCormick Tea Co. at Baltimore, the National Cash Register Co. at Dayton, Ohio, and the Cleveland Twist Drill Co. at Cleveland. In these discussions we were accorded the full cooperation of the managements as well as those unions involved. The programs of several of these companies are discussed below, and the general conclusion can be made here that in the opinion of those interviewed plant efficiency and employee productivity are greater and the price of the product is less—as a direct result of better employer-employee cooperation growing out of these incentive and profit-sharing plans.

The plan of the Procter & Gamble Soap Co. at Cincinnati, Ohio, has been so often explained in discussions of guaranteed-annual-wage arrangements that no purpose would be served by another detailed presentation here. However, there is a valuable lesson to be learned from the cooperation between the union and the management which has resulted in a reliable guaranty of regular employment, a bonus system, a profit-sharing plan, a pension program, and payment for off-the-job as well as on-the-job disabilities.

The Eastman Kodak Co. at Rochester, N. Y., does not have a collective-bargaining agreement with any union, although more than 50,000 persons are employed in all the company's operations. Eastman does not guarantee full-time annual employment. It pays what are known as wage dividends in addition to regular wages, which incidentally compare favorably with the general area rates for its plants and with the rates for its competitor companies. These wage dividends to employees exceeded by $10,000,000 the total dividends paid on the common and preferred stock in 1947. The higher the stock dividends are the higher the wage dividends.

Eastman also has an advanced retirement program where payments accrue to the individual after 20 years' continuous service regardless of his reason for leaving the company. A noteworthy provision is made that any break in service because of depression or lack of work will not be considered a break in company service in computing retirement eligibility.

The Council of Profit-Sharing Industries, an organization of companies which have active profit-sharing plans, was formed in the fall of 1947. There are about 100 member firms and corporations in the

council, and its purpose is to exchange and disseminate information—based on experience—on problems which arise in the operation of incentive and profit-sharing programs. At public hearings in the summer of 1948, this committee explored the program of the council in some detail. That testimony appears in the printed record of those hearings. The members of the council have found no basis for the often-expressed fear that such profit-sharing plans would unduly "open the books" and allow labor to usurp the role of management. On the contrary, they have not only led to better employee understanding of management's problems but to a more informed evaluation of the relationship real profits bear to capital investment and to the financial responsibility of maintaining any business as a long-term going concern.

The past few years have seen a notable increase in the number of welfare funds, pension plans, incentives, etc., which are the products of collective bargaining. The subject of welfare funds is discussed elsewhere in this report and is not elaborated on here. However, in any discussion of production incentives, it should be borne in mind that many incentive and profit-sharing systems have been and are being evolved successfully through collective bargaining.

The wishes of employees in this field are not yet well defined. Still, it might be safely said that the average worker is probably more interested in a comprehensive plan including an immediate return of cash such as a production bonus or profit sharing than in a long-range program only, such as a pension plan. The rejection of the proposed Ford Motor Co.-UAW pension plan in 1948 by the employees is perhaps a significant lesson to management and unions in this respect.

This report does not touch upon the legal, economic, or tax aspects of incentive and profit-sharing plans. These phases present formidable problems, but they have been met successfully by so many that they should no longer be considered insuperable hurdles.

The committee limits itself here to the presentation of some of the facts regarding the more successful programs. We commend the whole subject of incentives and profit sharing to unions and management as worthy of exploration, since those plans we have studied seem to fulfill the basic aims of progressive labor-management relations in that they result in greater efficiency, more wages, uninterrupted employment under desirable working conditions, and generally lower prices to the public.

Welfare Funds [1]

In recent years increased attention has been given to the problems of health, old age, and other phases of welfare. The approaches have, however, been varied and only a slight degree of integration has prevailed. Federal legislation embraces a number of the problems. Under the direction of the Social Security Administration, monthly old-age and survivors' insurance benefits, unemployment insurance, public assistance, and various maternal and child health and welfare services have been provided. Railroad workers receive death and unemployment benefits under a Federal program. Likewise, Federal law provides for the retirement and disability of military personnel,

[1] Also see the committee's special report on welfare funds.

and a civil-service retirement system has been established for Government employees. Numerous programs have been created to afford benefits to the employees of State and local governments. All States have enacted workmen's compensation laws providing benefits for work-connected disabilities. Individuals have, of course, supplemented these various forms of protection by purchasing their own insurance. In addition, a large number of employer-sponsored plans have afforded retirement, life insurance, and health benefits to employees. A recent significant development in the field has been the establishment of health, welfare, and retirement plans through the process of collective bargaining.

Growth of Union-Management Plans

Impetus to union demands for union-management welfare plans was quickened during World War II by the Stabilization Act of 1942, as amended, placing restrictions upon wage and salary increases. Section 10 of the act defined "wages" and "salaries" so as to exclude insurance and pension benefits in a reasonable amount. The regulations of the Director of Economic Stabilization further provided that premiums paid by an employer on policies of group life insurance without cash surrender value covering the lives of his employees, or on policies of group health, hospitalization, or accident insurance covering his employees, did not constitute wages or salary.

The wartime demand for the establishment of health, welfare, and retirement plans through collective-bargaining agreements has continued since the enactment of the Labor-Management Relations Act of 1947. The number of employees now covered by such plans exceeds 3,000,000, or more than twice the number covered in 1947. In 1945 it was estimated that 600,000 workers were included; approximately 1,250,000 were said to be covered by early 1947.[2] The figure as of August 1948 was estimated as in excess of 3,000,000.[3] It is not known exactly how many workers are covered in each national or international union because of the fact that in many unions health, welfare, and retirement plans have been developed entirely by the locals, and therefore figures on the extent of development are not always available to officials of the international. The Bureau of Labor Statistics reports, however, that plans are known to exist under collective-bargaining agreements within the jurisdiction of nearly 100 different internationals, and that a large number of workers in the following industries are covered:[4] Building trades, clothing, cleaning and dyeing, coal mining, furniture, fur and leather, hotel and restaurant, jewelry and playthings, local transportation, office and professional workers, machinery, millinery, paper, rubber, retail and wholesale trade, shipbuilding, steel, telephone and telegraph, textiles and hosiery, and utilities. Coverage in some of the larger industries was estimated to be—

	Workers
Coal mining	450,000
Clothing and textiles	875,000
Street and electric railway	150,000
Steel	138,000
Electrical (United Electrical Workers, alone)	138,000

[2] Bureau of Labor Statistics Bulletin No. 900.
[3] Monthly Labor Review, September 1948, vol. 67, No. 3.
[4] Monthly Labor Review, September 1948, vol. 67, No. 3.

Of the 3,000,000 workers who are covered, the Bureau estimates that 11 percent receive only pension benefits, 45 percent receive health benefits, and both types of benefits are available to the remaining 44 percent.

The figures of the Bureau of Labor Statistics given above, reflect those health, welfare, and/or benefit plans (*a*) negotiated as a part of labor-management agreements, (*b*) those originally established by employers, and later written into an agreement, and (*c*) those agreements which simply establish employer responsibility to provide various types of insurance.

Characteristics

Health, welfare, and retirement plans assured through collective-bargaining contracts follow no particular pattern. They vary as to methods of financing and insuring. Likewise, there are differences in administration, benefits, eligibility criteria, and other details. When classified according to the means used in financing, funds may be grouped according to whether moneys are derived from the employer, or are the result of joint contribution. Administration may be vested in the employer, the union, or a union-management group. In addition, plans may be insured by an established private carrier, or an insurance company chartered for the express purpose of insuring a particular plan, or benefits may be paid directly from the fund. Where insurance is with an established private company, the company in many instances has a role in the administration of the plan. The chart which follows shows the principal characteristics of some of the better known plans.

Union	Contributions	Type of carrier	Administration	Eligibility for benefits	Type of benefits
United Hatters, Cap, and Millinery Workers International Union, AFL; 32 local funds, 3 in Canada. Date: First local welfare fund, May 1944.	Employer only, 17 funds, 3 percent of gross pay roll: 14 funds, 2 percent of gross pay roll; 1 fund, fixed amount.	21 funds self insured; 11 funds commercial insurance companies.	As a rule joint administration by boards of directors or trustees; some union administered funds.	Employee of contributing employer, good standing in the union, waiting period of 26 weeks before eligible; eligibility determined by benefit committee composed of employees, appeal to executive board of union.	Accident, sickness, hospital, surgical.
United Furniture Workers of America, CIO; centralized fund, Sept. 30, 1944.	Employer only. 3 percent of pay roll.	Commercial insurance company, Blue Cross.	Union administration; regular reports to contributing employers.	Membership in local union; in full-time employ of contributing employer.	Life insurance, accidental death, and dismemberment insurance, surgical benefits, accident and sickness benefits, medical expense benefits, family hospitalization.
Upholsters International Union, AFL. Date: May 1944.	Employer only. 3 percent of aggregate wages paid to union members.	Commercial insurance company.	Policies issued to board of trustees of union; social-security department of union governed by international union board of trustees.	Insurance department of union investigates and processes claims; eligibility for maximum benefits conditioned upon good standing and employment by employer who complies with all contractual obligations toward social-security fund.	Life insurance, accidental death and dismemberment, health, and accident, medical expenses, surgical expenses, hospitalization for dependents.
United Textile Workers of America, AFL, contracts with individual companies.	Employer payment of insurance premiums.	Commercial insurance company and Blue Cross.	Policies issued to company..	30 days of continuous employment with company; actively at work (American Woolen Co.)	Life insurance, accident and sickness benefits, accidental death and dismemberment, medical and surgical expenses, hospitalization.
Federation of Dyers, Finishers, Printers, and Bleachers of America, CIO, contracts with individual companies (1943).	----do----------	Commercial insurance company.	----do----------	"All present employees participate in benefits of insurance program"; 30-day waiting period for new employees.	Life insurance, sickness and accident, hospitalization, surgical aid.
Progressive Mine Workers of America, central fund.	Employer. 10 cents per ton of coal mined.	Fund self-insured for death and disability benefits and pensions. Group hospitalization by commercial carrier.	Joint representation on joint State executive board and cotrustees; provision for impartial umpire.	Good standing in union; employees of contributing employers.	Group hospitalization, death and disability benefits, pensions ($30 per month.)

International Brotherhood of Electrical Workers, AFL, central fund, Sept. 3, 1946.	Employer. Pay-roll tax of 1 percent paid to employees benefit board. Employees benefit board pays to board of trustees a sum not in excess of amount paid into brotherhood pension fund by its own members.	Self-insured----------	Tri-partite; employee benefit board collects and reports funds; transfers moneys to board of trustees of pension fund.	65 years of age; union membership in continuous good standing for 20 years, class A member.	Pensions.
United Mine Workers, centralized fund.	Employer: 20 percent per ton of coal mined.	Self-insured----------	Tripartite board of trustees (employer, union, and neutral chosen by agreement of 2).	Pension: 20 years employment in industry; 62 years of age; membership in union.	Retirement pension ($100 per month), disability and hospitalization.
United Automobile Workers, CIO:					
(1) Kaiser-Frazer----------	Kaiser-Frazer: (1) Employer; 5 cents per hour for each hour worked by employees covered by union agreement.	----------	(1) Joint board with equal representation to both parties.	----------	(1) Hospitalization, sickness and accident, medical service, life insurance.
(2) Ford----------	Ford: (2) Joint; employee contribution specified, company pays balance.	(2) Commercial carrier and Blue Cross.	(2) Company selection of carrier and deduction of pay roll upon individual authorization; union advisory committee.	----------	(2) Life insurance, accidental death and dismemberment, weekly accident and sickness.
Amalgamated Clothing Workers, CIO, centralized fund (national union exercises supervision over 7 different funds).	2 percent (3 funds), 3 percent (1 fund), 5 percent (1 fund, includes retirement).	Insured by Amalgamated Life Insurance Co.	Union board of trustees employer advisory committee (with limited veto power).	Good standing in union; employees of contributing employer. Eligibility determined by insurance company.	Death, weekly disability, hospital and surgical, maternity, retirement (clothing fund).
International Ladies Garment Workers Union AFL, 49 local funds.	Employer: 3 to 4 percent of pay roll (percentage differs among locals).	Self-insured----------	Local or joint board basic standards and rules established by international union.	Membership in union local; 6 months in covered industry; local union determines validity of claim; appeal to joint board and international.	Sick benefits, hospitalization, surgery benefits maternity benefits, tuberculosis, eye conservation, vacation benefits, union health centers. (Type and amount of benefits in 2 joint boards benefits vary from one union to another). Retirement benefits in 2 joint boards.

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A more complete discussion of these and other plans appears in the committee's special report on welfare funds.

EMPLOYEE EQUITIES

A common feature of most plans the committee has examined is the requirement conditioning employment of benefits upon "good standing in the union." The wisdom of using a welfare program as a means of enforcing union discipline is seriously questioned. The inadvisability of such a use is especially apparent where continuous good standing in the union for as many as 20 years is necessary in order for a participant to be eligible for pension benefits. It also provides a means of obtaining a condition closely approaching the closed shop now prohibited by the act. The benefits may become so attractive as to militate against any free choice in the change of bargaining representative or repudiation of the existing representative.

Moreover, the confinement of benefits to those who maintain good standing in the union is of doubtful validity. In *Steele* v. *L. & N. R. Co.* (323 U. S. 192 (1944)) the Supreme Court ruled that a union has the duty in collective bargaining and in making collective-bargaining agreements "to represent nonunion or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith." To deprive nonunion members of welfare benefits would not seem to be wholly without discrimination.

COMPULSORY BARGAINING ON WELFARE PLANS

Although a number of employers voluntarily bargain with labor organizations representing their employees on health, welfare, and retirement plans and agree to the incorporation of various phases of the subject in labor-management contracts, there remains for final adjudication the question of whether the subject is within the area of mandatory collective bargaining. In April of 1948 the NLRB ruled on this issue. In a 4-to-1 decision the Board adopted the recommendations of its trial examiner in the *Matter of Inland Steel Company* and *Local Union, Nos. 1010 and 64, United Steelworkers of America (CIO)*, (77 N. L. R. B. No. 12), ruling that pension and retirement plans are within the area of compulsory bargaining. In this case, the Board found that the company had refused to discuss with the union the amendment and application of the terms of an old-age retirement and pension plan originally established by the company. This refusal to bargain, the Board found, amounted to an unfair labor practice under section 8 (5) of the National Labor Relations Act, in that the company's unilateral action on amendments to the plan changed the employees' "wages" and "conditions of employment" as the terms were used in section 9 (a) of the National Labor Relations Act. The Board construed the term "wages" to include "emoluments of value, like pension and insurance benefits, which may accrue to employees out of their employment relationship." The company's contribution to the plan, the Board said, "constitutes an economic enhancement of the employee's wages." With reference to the effect of the company's unilateral action upon "conditions of employment," the Board held that "matters affecting tenure of employment, like the respondent's retirement rule, lie within the statutory scope of collective bargaining."

The Board found in the legislative history of the amended act what to it was compelling evidence that Congress intended to encompass pension and retirement plans within the meaning of "wages or other conditions of employment" as those terms were used in the original act. It also found that in reenacting these provisions, there was evidence of congressional willingness "to allow that conclusion to stand."

The case of *W. W. Cross and Company* and *United Steelworkers of America, CIO* (77 N. L. R. B. No. 1162), carries the doctrine of the Inland Steel case into additional areas. It involves the union's right to have included in contract negotiations the terms of a company-sponsored group health and accident insurance plan under which benefits are afforded the company's employees. For the reasons given in *Matter of Inland Steel Co.*, the Board found that the company had a statutory duty to bargain collectively concerning the terms of its group health and accident insurance program.

On appeal of the Board's Inland Steel decision, the United States Circuit Court of Appeals for the Seventh Circuit on September 23, 1948, unanimously held—

> that the order of the Board, insofar as it requires the company to bargain with respect to retirement and pension matters, is valid.

The case has been appealed to the United States Supreme Court. The W. W. Cross decision has been appealed to the United States Circuit Court of Appeals for the First Circuit.

EMPLOYER'S STAND ON COMPULSORY BARGAINING

At the hearings before the committee in May and June of 1948, a number of employers presented their views on bringing these plans within the realm of compulsory collective bargaining as would be required by the Inland Steel and W. W. Cross decisions of the NLRB. It was their position that the problems arising from mandatory bargaining on the subject will result in an undue burden being imposed on the bargaining procedure and that increased industrial strife will follow. Further, the creation of new plans and the liberalization of old ones will be discouraged, and some plans now in operation may be abandoned if the employer is now required to bargain upon the subject. The problems stated to be inherent in the situation were essentially the following: (1) Welfare programs are highly complex and their establishment requires thorough study and planning. There are detailed tax and actuarial requirements to be met while integration with provisions of State and Federal social-security laws must be considered. When negotiating such matters as wages and hours there are patterns which the parties may follow, but that is not true of a pension plan. The problem of each company in setting up a pension plan is unique. The cost for each company depends upon a number of variable factors such as the age of its workers, mortality experience, level of employee earnings, cost of administration, and changing interest rates. To negotiate on such complicated matters is impractical for there must be agreement on the part of the union and the company. In addition, if the plan is insured by commercial carrier, its details must be embodied in the contract with the carrier and in order to attain

full advantage of the deductions permissible under the Internal Revenue Code, the plan must be approved by the Bureau of Internal Revenue. (2) Many employers must deal with a number of unions. This presents even greater difficulty because employee representatives must themselves agree upon uniform demands, otherwise a number of small unrelated plans will arise. Interunion competition makes unlikely the attainment of a uniform program. Maximum efficiency is impossible if a number of small separate plans are resorted to. The cost of the program will rise because administrative costs increase as the number of group contracts increase and premiums increase as the size of the group covered decreases. The effectiveness of the program is thereby threatened. (3) Long-range plans such as those included in a welfare program involve commitments which require a careful analysis of the company's business outlook. The companies feel that they alone can make this analysis. (4) Some employers feel that if these programs are included in contracts, certain of the flexibility which is desirable will be lost. These employers feel that they must retain the right to make modifications as the existing conditions require. Without this flexibility there can be no certainty of the continuation of the program. (5) Many existing employer-sponsored pension plans are related to earnings and length of service of the employees. If a flat pension amount is demanded and obtained, existing plans as well as the solvency of companies could be endangered. (6) An integral part of the pension plans is the compulsory retirement of the employees at a normal retirement age. If this is bargained away, one of the main purposes for such a plan is defeated. (7) Unions often demand that eligibility to benefits be restricted to union members. The company's responsibility extends to all its employees. (8) Plans which involve long-range policy should not be subject to change with each succeeding contract year. (9) Innumerable problems will arise in the course of administration, but once a part of the contract, the program will be subject to the usual grievance and arbitration procedure. The company would thus be placed in the anomalous position where it would be bound by the decisions of the arbitrator while the insurance carrier would not.

UNIONS' STAND

Representatives of several unions also presented their views with respect to mandatory bargaining on health, welfare, and retirement plans. The need of their membership especially for medical care was stressed and the inadequacy of employer-sponsored pension plans was given as a further reason for bringing such plans within the ambit of compulsory bargaining. Through the creation of funds the coverage of which is coextensive with the union's membership, union leaders hope to attain a greater continuity of coverage than now exists under company plans. They point out that coverage under company plans is limited to those workers employed by the particular company and that when a worker leaves the company he usually loses what he had contributed to the insurance fund unless he converts the policy at a higher rate. The proposal was for a blanket policy made out to the union covering its membership. A worker would therefore retain his coverage as long as he maintained his union membership. It was the contention of the general counsel for the CIO that necessity

for actuarial soundness and compliance with the requirements prescribed by the Treasury Department did not prevent the handling of plans within the framework of collective bargaining. He cited the experience of the United States Steel Corp. and the United Steelworkers of America in establishing a joint committee which rendered a unanimous factual report and submitted cost estimates on each type of benefit under consideration.

RESTRICTIONS PROVIDED IN SECTION 302 OF THE ACT

Employees of such employer

Section 302 (c) (5) in restricting the use to which such funds may be put states "for the sole and exclusive benefit of the employees of such [the contributing] employer." This provision was an issue in the activation of the fund of the United Mine Workers and in the continuation of the fund of the American Federation of Musicians.

The March 1948 strike in the coal mines grew out of the inability of the trustees of the miners' welfare fund to agree upon its activation. John L. Lewis, the trustee designated by the union, proposed the payment of $100 per month to members of the United Mine Workers who had reached the age of 60 and who had been employed in the industry for 20 years. One of the objections to this proposal made by the trustee selected by the employers was that benefits must be confined to employees of the contributing employers. He pointed out that the Lewis proposal would provide pensions for union members working in mines whose owners would not be contributing to the fund.

Before the act the musicians fund had been supported by a royalty upon records which the recording companies paid into the fund. The benefits of the fund were enjoyed by unemployed musicians paid from the fund to present free music to the public. In most, if not all, instances the musicians directly benefiting were not and never had been employed by the contributing recording companies. When the parties were unable to agree upon a plan for continued support of the fund, the union refused on December 31, 1947, to make any more records.

Employee representatives

Agreement between the musicians union and the recording companies was finally reached on December 13, 1948, when the Attorney General concurred in an opinion of the Solicitor of the Department of Labor that the plan agreed upon by the parties did not violate the act. A copy of this opinion and supporting memoranda are included in the appendix. This opinion stated that the restrictions of section 302 were inapplicable to the fund because the royalties were to be paid by the recording companies to a trustee selected by them, who was, therefore, not a representative of the union within the meaning of the act.

Section 302 makes it a misdemeanor for an employer to make any payment of money to any "representative" of his employees and likewise for a representative of employees to accept such payment unless the restrictions of the section have been complied with. While the committee has not had the opportunity to study all of the terms and conditions of the agreement, we are apprehensive that a precedent has been established whereby any union and employer desiring to do so may seek to bypass all of the restrictions of the statute. Since those

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restrictions all sought to guarantee to the individual worker his fullest participation in the fund created for his benefit, the action taken with respect to the musicians' fund merits the close attention of Congress.

The committee has been informed that the original neutral trustee for the miners' fund expressed his opinion that that fund was not subject to the restrictions of section 302 because the employer contributions were not made to an employee "representative" but to trustees.

In *Rice-Stix Dry Goods Co.* v. *St. Louis Labor Health Institute* (22 LRRM 2528, U. S. Dist. Ct. E. D. Mo., 1948) the court held that a welfare plan was not subject to the restrictions of section 302 of the act. In this case the officers of the union had organized a corporation devoted to charitable, religious, scientific, and benevolent purposes. The union and the employer entered into a collective-bargaining agreement whereby the employer agreed to make payments for the benefit of his employees to the charitable corporation. The employer filed its complaint for a declaratory judgment, joining the charitable corporation and the union as party defendants, seeking the court's determination of the question whether the employer could, without violation of section 302 of the Labor-Management Relations Act, 1947, make the payments to the charitable corporation required by the collective-bargaining agreement.

The court ruled that such payments could lawfully be made for the reason that the charitable corporation was not a representative of any employees of the plaintiff as set forth in section 302 of the Labor Management Act, 1947, and that the "management and funds of the St. Louis Labor Health Institute are not under the control of" the union. Whereas the court found that the management and funds of the charitable corporation were not under the control of the union, it appears from the record itself that the top officers of the union not only organized the charitable corporation but were the president and secretary-treasurer of it.

The committee believes that the intent of section 302, if not its words, is clearly violated by these arrangements which attempt to remove such funds from the section's restrictions. It is plain that section 302 (a) and (b) prohibit payment to or receipt by "any representative" of employees. However, subparagraph (c) which follows contains the specific exceptions to this general prohibition. With respect to welfare funds, it excepts money "paid to a trust fund established by such representative." It would seem that the funds referred to above were "established by such representative," for they all were established by collective-bargaining agreements negotiated and entered into by the labor organizations involved. If they are not covered by the provisions of section 302 (c), it is equally valid to say that no trust fund established by collective-bargaining agreement, especially when it complies with the section, is covered by it. The section then becomes meaningless. Expressed otherwise, this view is tantamount to saying that if the parties comply with section 302 (c) so as to make the payments to three trustees, one selected by the employer, one selected by the union, and one neutral selected by the other two, then no portion of section 302 applies because the payments are not being made to a representative of the employees. However, since this seems to be a theory which has already been adopted in a few instances, serious consideration should be given by Congress to an amendment making such circumvention impossible. This may be done by clear and unmistakable language to the effect that no money may be paid to any trust fund which is the subject of collective bargaining except in accordance with the limitations enumerated in section 302 (c) (5).

Funds established prior to January 1, 1946

Section 302 (g) exempts from certain requirements of 302 (c) regarding welfare funds "contributions to such trust funds established by collective agreement prior to January 1, 1946." In our March 15, 1948, report we pointed out that arbitrators have construed this subsection to permit a perpetual exemption from these requirements to those funds established prior to January 1, 1946, even though the contribution is made by an employer for the first time after that date. In other words, a labor organization having one fund in existence prior to that date in any place in the United States, no matter how few employees it covered, might still bypass the statutory requirement if it could induce other employers to make their contributions to the pre-existing fund. This practice is being followed (hearings, pp. 434–437). The committee believes it was the intent of Congress not to extend the exemption beyond those employers who were contributing to a fund before the 1946 date. Such result could be more clearly accomplished by the insertion of the words "where the employer made such contributions prior to such date" after "1946."

Conclusion

The Labor Management Relations Act has been in effect for 16 months. Seldom, if ever, has a law been placed upon the statute books with so many odds against it. Labor organizations have waged an unceasing attack against the law in their press, in radio programs, and in public speeches. It was made an issue in a national political campaign in which the President and the platform upon which he conducted his campaign promised its repeal. Such expressions militated against the creation of a calm and temperate atmosphere wherein the affected parties could learn, and practice, duties and responsibilities created by the act.

The date when the act went into effect found the National Labor Relations Board, which had been given responsibility for most of its enforcement, ill-prepared to carry out its task. Cases arising under the Wagner Act had accumulated during the 6 months the act was under consideration in Congress. On the effective date of the act, the Board had a backlog of 3,933 cases and there are still remaining some 500 Wagner Act cases to be decided. Thus, unions and employers have not had the guidance of Board interpretation upon its provisions.

In spite of these handicaps, the committee has found the law to be working well, without undue hardship upon labor organizations, employers, or employees. Given another year to gain the general acceptance, knowledge, and understanding of its provisions, the committee is convinced that the act will have proven beyond all doubt its effectiveness in promoting the adjustment and disposition of labor problems equitably, and in creating more friendly and cooperative relationships.

We have recommended some amendments. Without exception, they have been in the direction of perfecting the intent and purposes of the present law. No new fields are invaded, but more adequate remedies are sought where present remedies have proved to be ineffectual. While there is considerable truth in the statement that good labor-management relations cannot be created by law, public interest requires the fixing of boundaries wherein sound, workable labor relations may be maintained through the cooperation of labor and management. In the Wagner Act the Federal Government provided boundaries for employer conduct, and in the 1947 law it sought to create a balance by setting limits for union activity. Labor-management relations has been an expanding field with the area for collective bargaining and the tactics of the parties constantly progressing. The boundaries for both labor and management conduct must be reappraised from time to time if the balance is to be maintained.

Since the statute has provided that this committee shall go out of existence on March 1, 1949, a greater duty falls to the Senate Committee on Labor and Public Welfare and the House Committee on Education and Labor to keep abreast of Labor-management problems. The committee's experience suggests procedures for gaining information which we recommend to the standing committees. Many of the subjects assigned to the committee for study are also being considered by private agencies. For example, a project of the National Planning Association into the causes of industrial peace has already established itself in its first two reports as meriting the close attention of any student of labor-management relations. Several agencies report and analyze all actions of the Government and its administrative agencies in the field of labor relations.

With so much trustworthy information available, a professional staff member assigned to the task should be able to keep the standing committee informed upon the operation of the act and alert it if there are developments which may require full investigation by a subcommittee.

APPENDIX

Memorandum Describing Statutory and Delegated Functions of the General Counsel

The statutory jurisdiction of the general counsel is defined as follows:

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise generally supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by the law.

I. CASE HANDLING

A. Complaint cases

General counsel has full and final authority to accept and investigate charges filed, to enter into and approve informal settlement of charges, to dismiss charges, to determine matters concerning consolidation and severance of cases before complaint issues, and to issue complaints and notices of hearing.

General counsel shall appear before trial examiners in hearings on complaint and prosecute as provided in the Board's rules and regulations. After issuance of intermediate report by the trial examiner, general counsel may file exceptions and briefs and appear before the Board in oral argument, subject to the Board's rules and regulations. General counsel shall, upon direction and in behalf of the Board, seek compliance with the Board's orders and make such compliance reports to the Board as it may from time to time require.

General counsel will, upon direction and in behalf of the Board, petition for enforcement, seek temporary restraining orders, and resist petitions for review of Board orders as provided in section 10 (e) and (f) of the act. The initiation of proceedings suggesting contempt with reference to any matters pertaining to the enforcement of or compliance with any order of Board will be done only upon direction of the Board by general counsel, who will thereafter appear and represent the Board in such proceedings in regular course. When directed to do so by the Board the proceedings described immediately above will be initiated by general counsel without exception. Successive proceedings by way of appeal or on petition for certiorari will be prosecuted by general counsel in his discretion unless directed to the contrary by the Board.

B. Representation cases

General counsel is assigned and delegated full and final authority and responsibility, on behalf of the Board, to receive and process in accordance with the act and in accordance with such regulations as may be prescribed by the Board all petitions filed pursuant to section 9 of the National Labor Relations Act as amended and section 203 (c) of the Labor-Management Relations Act of 1947 when requested so to do either by the Board or the Federal Mediation and Conciliation Director, and section 209 (b) of the above act; and to enter into consent election agreements in accordance with section 9 (c) (4) of the act subject to regulations prescribed by the Board.

The authority and responsibility in representation cases herein delegated to general counsel shall extend, subject to provisions of the act and in accordance with the rules and regulations of the Board, to all phases of the investigation through the conclusion of the hearing provided for in section 9 (c) and section 9 (e) (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearing are reserved by the Board to itself. In the event a direction of election should issue by the Board, the authority and responsibility herein delegated to general counsel shall attach as to the

conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election, and other similar matters, except that if appeals shall be taken from the general counsel's action of the validity of challenges and objections, such appeals will be directed to and decided by the Board in accordance with such procedural requirements as it shall prescribe. If challenged ballots would not affect results and if no objections are filed within 5 days after the conduct of a Board-directed election under the provisions of section 9 (c) of the act, general counsel is authorized on behalf of the Board to certify to the parties the results of the election in accordance with regulations prescribed by the Board.

Appeals from the refusal of general counsel to issue a notice of hearing on any petition, or from the dismissal by general counsel of any petition, will be directed to and decided by the Board in accordance with such procedural requirement as it shall prescribe.

In election petitions filed pursuant to section 9 (e) of the act, general counsel shall, under the foregoing authority and responsibility, conduct an appropriate investigation as to the authenticity of the 30-percent showing referred to and upon making his determination shall proceed to conduct a secret ballot and, if there are no challenges or objections which require a hearing on behalf of the Board, certify the results thereof as provided for in such section with appropriate copies lodged in the Washington files of the Board.

In conducting elections pursuant to the provisions of section 9 (e), general counsel will be guided by the provisions of State statutes governing restrictions on union-shop contracts where such contracts are prohibited or when their requirements are in excess of those provided in the act, but will not diminish the requirements of the act.

C. Jurisdictional dispute cases

General counsel shall exercise full and final authority and responsibility, on behalf of the Board, for the full performance of all functions necessary to the accomplishment of the provisions of section 10 (k) of the act, but in connection therewith the Board will, at the request of general counsel, assign to him for the purpose of conducting the hearing provided for therein, one of its staff trial examiners. This assignment and delegation of authority and the assignment of the trial examiner to the general counsel shall terminate with the close of the hearing, after which the Board will assume full jurisdiction over the matter for the purpose of deciding the issues in such hearing on the record made and subsequent hearings, or related proceedings and will rule upon any appeals.

D. Injunction cases

General counsel shall exercise full and final authority and responsibility, on behalf of the Board, for initiating and prosecuting injunction proceedings as provided for in section 10 (j) and (l).

II. SUBPENAS

As granted in the act and the Board's rules and regulations, subpenas are granted upon application. Applications for revocations of subpenas issued in connection with cases arising out of charges filed under provisions of sections 8 of the act will be ruled upon by the trial examiner or the Board. Applications for revocations of subpenas issued in connection with matters arising out of a petition filed under provisions of section 9 of the act will be ruled upon by general counsel.

Proceedings for the enforcement of subpenas issued at the instance of the general counsel shall be instituted by the general counsel where, in his opinion, such proceedings are necessary and desirable. Proceedings for the enforcement of subpenas issued at the instance of private parties shall be instituted by the general counsel in the name of the Board but on relation of such private party who requested the subpena, and the responsibility for the prosecution of the petition for enforcement shall rest upon the private party on whose relation the suit was instituted.

III. RULES AND REGULATIONS

Procedural and operational regulations for the conduct of the internal business of the Board within the area that is under the supervision and direction of general counsel will be prepared and promulgated by the general counsel.

IV. STATE AGREEMENTS

Agreements affecting any of the States or Territories as contemplated in section 10 (a) of the act shall be negotiated by general counsel but without authority to commit the Board in any respect until and unless the Board and the general counsel shall join with the appropriate authorities of the State or Territory affected in the execution of such agreement.

V. LIAISON WITH OTHER GOVERNMENTAL AGENCIES

There is assigned and delegated to general counsel full and final authority and responsibility, on behalf of the Board, to maintain appropriate and adequate liaison and arrangements with the office of the Secretary of Labor with reference to the reports required to be filed pursuant to section 9 (f) and (g) of the act and availability to the Board and general counsel of the contents thereof.

General counsel is delegated and assigned the authority and responsibility to maintain appropriate and adequate liaison with the Federal Mediation Board with respect to any functions that may be performed in connection with the provisions of section 203 (c) of the act, and with the latter Board and any other necessary Governmental agency with respect to functions which may be performed in connection with the provisions of section 203 (c) of the act, and with the latter Board and any other necessary governmental agency with respect to functions which may be performed in connection with the provisions of section 209 (b) of the act. Likewise, general counsel, on behalf of the Board, shall maintain appropriate and adequate liaison with the Department of Justice in connection with the functions of the latter under the provisions of section 208 of the act, particularly with respect to obtaining uniformity on the question of asserting jurisdiction.

VI. ANTICOMMUNIST AFFIDAVITS

There is assigned and delegated to general counsel full and final authority and responsibility, on behalf of the Board, to receive the affidavits required under section 9 (h) of the act, to maintain an appropriate and adequate file thereof, and to make available to the public, on such terms as he may prescribe, appropriate information concerning such affidavits, but not to make such files open to unsupervised inspection.

VII. MISCELLANEOUS LITIGATION INVOLVING BOARD AND/OR OFFICIALS

General counsel shall have the duty and responsibility to appear in any court on behalf of the Board to represent the Board or any of its or the general counsel's agents unless directed otherwise by the Board.

VIII. PERSONNEL

In order to better insure the effective exercise of the delegated duties and responsibilities described above, general counsel subject to applicable laws and the rules and regulations of Civil Service Commission, is delegated full and final authority on behalf of the Board over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects, of all personnel engaged in the field and in the Washington office (other than trial examiners; legal assistants to Board members; the personnel in the Information Division, the Solicitor of the Board and personnel in his office; the executive secretary of the Board and personnel in his office, including the Order Section; and personnel engaged in assisting the executive secretary in carrying out his duties; and secretarial, stenographic, and clerical employees assigned exclusively in the work of the members and the office of the executive secretary). In connection with and in order to effectuate the foregoing, general counsel is authorized to execute such necessary requests, certifications, and other related documents on behalf of the Board as may be needed from time to time to meet the requirements of Civil Service Commission, the Bureau of the Budget, or any other governmental agency.

Included in the Washington personnel over whom the general counsel has full and final authority as defined above, are those engaged in administrative functions, such as personnel actions, budget, accounting, library, telephone service, procurement and allocation of space, mail files, messengers, pay rolls, and such

other functions as normally fall within the accepted term "housekeeping": *Provided, however,* That such authority shall be exercised with respect to individuals directly and primarily engaged in personnel or budget functions only with the concurrence of the Board. General counsel will, however, provide such of the above services as are required by the Board in the conduct of its administrative business at all times so as to meet the requirements of the Board.

IX

To the extent that the above-described duties, powers, and authority rest by statute with the Board, the foregoing statement constitutes a delegation of such duties, powers, and authority whether or not so specified.

OPINION OF DEPARTMENT OF JUSTICE ON CONTRACT CHECK-OFF CLAUSES UNDER TAFT ACT

DEPARTMENT OF JUSTICE,
Washington, May 13, 1948.

Hon. WILLIAM S. TYSON,
Solicitor, Department of Labor, Washington, D. C.

DEAR MR. TYSON: I refer to your letter of May 6, 1948, requesting our views on certain questions arising under the provisions of subsection (c) of section 302, title III, of the Labor Management Relations Act of 1947.

I enclose a memorandum dated May 13, 1948, directed to me by the Assistant Attorney General in charge of the Criminal Division. I agree with the views therein expressed.

Sincerely yours,

GEORGE T. WASHINGTON,
Assistant Solicitor General.

Enclosure.

MAY 13, 1948.

Questions raised by the Solicitor of the Department of Labor regarding section 302 of the Labor Management Relations Act of 1947.

GEORGE T. WASHINGTON,
Assistant Solicitor General,

T. VINCENT QUINN,
Assistant Attorney General:

This refers to your memorandum of May 10, 1948, attaching a letter, dated May 6, 1948, addressed to you by William S. Tyson, Solicitor of the Department of Labor, in which he raises two questions under section 302 (c) of the Labor Management Relations Act of 1947 with respect to certain types of check-off authorizations by union employees. Mr. Tyson states that it would be in the best interest of industrial peace and the stability of industrial relations to put at rest uncertainties which may exist at this time concerning the application of section 302 (c) and which may impede the orderly and successful carrying on of collective-bargaining negotiations. You request an expression of our views with respect to the questions raised.

The factual situation involved herein relates to a proposed form of check-off authorization which is being considered by a large international union and a large manufacturing corporation. The check-off authorization addressed to the employer and to be signed by the employee reads as follows:

"I hereby assign to Local Union No. ———, ——— International Union, from any wages earned or to be earned by me as your employee, the sum of $——— per month and initiation fees and assessments, or such amount as may hereafter be established by the union and become due to it, as my membership dues in said union.

"I authorize and direct you to deduct such amounts from my first pay for each month and to remit the same to the Union.

"This assignment, authorization, and direction shall become operative contemporaneous with the effective date of the new collective bargaining agreement between the Employer and the Union which shall succeed the current collective agreement between the same parties.

"This assignment, authorization, and directive shall be irrevocable for the period of one (1) year, or until the termination of the said new collective agreement between the Employer and the Union, whichever occurs sooner; and I agree and direct that this assignment, authorization, and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Employer and the Union, whichever shall be shorter, unless written notice is given by me to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Employer and the Union, whichever occurs sooner.

"This authorization is made pursuant to the provisions of section 302 (c) of the Labor Management Relations Act of 1947 and otherwise."

The constitution of the union which desires to utilize this form of check-off authorization has contained, from November 1947, the following provision:

"Membership dues shall include the following financial obligations due and owing by a member or applicant for membership:

"(*a*) Initiation of reinstatement fees, as the case may be.
"(*b*) Monthly fees (hereinafter referred to as 'dues' or 'monthly dues').
"(*c*) Special fees (hereinafter referred to as 'assessments') levied by the international union or any of its subordinate bodies in accordance with the provisions of the international union."

Section 302 of the Labor Management Relations Act reads, in pertinent part, as follows:

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

* * * * * * *

"(c) The provisions of this section shall not be applicable * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*: That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner: * * *."

The first question raised by Mr. Tyson is as follows:

Does the term "membership dues" in section 302 (c) of the act include initiation fees and assessments as well as regular periodic dues, particularly where the union constitution provides that such fees and assessments are included in the term "membership dues."

This identical question was presented by the Criminal Division as the result of the national bituminous coal wage agreement of 1947 which contained a provision for the check-off of membership dues, including initiation fees and assessments of the United Mine Workers of America and its various subdivisions, as authorized and approved by the international union, UMWA. In a memorandum, dated July 10, 1947, we furnished the Attorney General with our views on this question, stating that initiation fees and assessments, being incidents of membership, should be considered as falling within the classification of "membership dues." We are still of this view.

The second question raised by Mr. Tyson is as follows:

Does section 302 (c) prohibit an employer from honoring a written check-off authorization signed by an employee which provides that it may be revoked at the end of each year within a designated period prior to the end of the year, but if not so revoked shall continue to be irrevocable from year to year until revoked during the period designated for annual revocation?

The proposed form of authorization follows the language of subsection (c) (4) of section 302, with the additional proviso that the authorization "shall be automatically renewed." In addition to the provision for revocation by the employee at the end of each successive year, authorization would automatically continue if written notice of revocation is not given the employer by the employee.

The question whether the incorporation of an automatic renewal provision in the proposed form of authorization would be in violation of section 302 (c) (4) is properly a matter for judicial interpretation. The legislative history of this act indicates that the main purpose of subsection (c) (4) was that the check-off

authorization be given by the employee in writing, and, further, that such authorization "shall not be irrevocable" for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner." Even with the automatic renewal provision, the proposed form of authorization does not appear to be "irrevocable for a period of more than one year." In view of this, we are of the opinion that the check-off under the proposed form of authorization would not appear to constitute a willful violation of subsection (c) (4), and, further, a case arising under this set of facts should not be considered an adequate basis for prosecution.

MAY 6, 1948.

Mr. GEORGE WASHINGTON,
Assistant Solicitor General, Department of Justice, Washington 25, D. C.

DEAR MR. WASHINGTON: The Department of Labor has been asked to furnish the answers to a number of important questions which have arisen under the provisions of subsection (c) of section 302, title III, Labor Management Relations Act, 1947, relating to the legality of certain types of check-off authorizations by union employees. The Department of Labor is not, of course, authorized to undertake to give any definitive interpretation of the statutory provision in question. It feels, however, that it would be in the best interests of industrial peace and the stability of industrial relations to put at rest uncertainties which may exist at this time concerning its application, and which may impede the orderly and successful carrying on of collective bargaining negotiations.

The questions to which I have referred have arisen in the following factual situation. A large international union and a large manufacturing corporation are considering a form of check-off authorization addressed to the employer, to be signed by the employee, which reads as follows:

"I hereby assign to Local Union No. ———, ——— International Union, from any wages earned or to be earned by me as your employee, the sum of $_____ per month and initiation fees and assessments, or such amount as may hereafter be established by the union and become due to it, as my membership dues in said union. I authorize and direct you to deduct such amounts from my first pay for each month and to remit the same to the Union.

"This assignment, authorization, and direction shall become operative contemporaneous with the effective date of the new collective agreement between the Employer and the Union which shall succeed the current collective agreement between the same parties.

"This assignment, authorization, and direction shall be irrevocable for the period of one (1) year, or until the termination of the said new collective agreement between the Employer and the Union, whichever occurs sooner; and I agree and direct that this assignment, authorization, and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Employer and the Union, whichever shall be shorter, unless written notice is given by me to the Employer and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement between the Employer and the Union, whichever occurs sooner.

"This authorization is made pursuant to the provisions of section 302 (c) of the Labor-Management Relations Act of 1947 and otherwise."

The constitution of the union which desires to utilize this form of check-off authorization has contained, from November 1947, the following provision:

"Membership dues shall include the following financial obligations due and owing by a member or applicant for membership:

"(a) Initiation or reinstatement fees, as the case may be.

"(b) Monthly fees (hereinafter referred to as 'dues' or 'monthly dues').

"(c) Special fees (hereinafter referred to as 'assessments') levied by the international union or any of its subordinate bodies in accordance with the provisions of the international union."

In view of the criminal penalties which are imposed in subsection (d) of section 302 for violation of subsection (c) of section 302, and which are applicable to employers as well as to unions and their officers, the negotiating parties are hesitant about adopting it unless they can be reasonably certain of freedom from criminal liability in doing so. The legality of the proposed type of check-off

authorization is not only of great importance to the immediate parties concerned, but has an important bearing on negotiations throughout the country between numerous labor organizations and employers.

I realize that ordinarily such a matter is properly for the courts to decide in appropriate proceedings under section 302 (d) of the act. It may be, however, that the enforcement policy of the Department of Justice is sufficiently crystallized at this time to permit you to express an opinion as to the following two questions, which appear to be among the more important that have been raised.

1. *Does the term "membership dues" in section 302 (c) of the act include initiation fees and assessments as well as regular periodic dues, particularly where the union constitution provides that such fees and assessments are included in the term "membership dues."*

2. *Does section 302 (c) prohibit an employer from honoring a written check-off authorization signed by an employee which provides that it may be revoked at the end of each year within a designated period prior to the end of the year, but if not so revoked shall continue to be irrevocable from year to year until revoked during the period designated for annual revocation.*

As indicated above, I believe that your opinion on these two questions would do much to assist in settling difficult labor-management controversies and to remove significant causes of industrial unrest.

Very truly yours,

WILLIAM S. TYSON,
Solicitor of Labor.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL,
December 13, 1948.

The honorable the SECRETARY OF LABOR.

MY DEAR MR. SECRETARY: I refer to your letter of December 10, 1948, with reference to the proposed trust agreement and labor agreement which have been under negotiation in the phonograph-recording industry, and enclosing a memorandum of the Solicitor of your Department concerning their legality under the Labor-Management Relations Act, 1947.

The memorandum examines in some detail the terms of these agreements, and gives particular consideration to the prohibition in section 302 of the Labor-Management Relations Act, 1947, against payments to a "representative" of employees. Your Solicitor concludes:

> "If the trustee should in fact become a representative of employees by his own actions, it would, of course, be a breach of the trust agreement. In this connection I am informed that the recording companies have already indicated their choice of a trustee, who from the information available appears to be an individual unaffiliated with the Federation capable of discharging his duties impartially and effectively.
>
> "Under all the circumstances it is my opinion that the trust agreement does not conflict with the Labor-Management Relations Act, 1947."

I think we are entitled to assume that these agreements will be carried out in good faith, according to their terms. On that assumption, and on the basis of the careful consideration which has been given to the matter in this Department as well as in the Department of Labor, I am prepared to express my agreement with the conclusions reached by your Solicitor.

With kind personal regards,

Sincerely yours,

TOM C. CLARK, *Attorney General.*

DECEMBER 10, 1948.

The honorable the ATTORNEY GENERAL.

MY DEAR MR. ATTORNEY GENERAL: This is in reference to our recent conversations and the discussions of members of our Departments, concerning the proposed trust agreement and labor agreement which have been under negotiation in the phonograph-recording industry. I understand that the parties have placed the situation before you, just as they have with me, in an effort to receive guidance as to the legality of the trust agreement under section 302 of the Labor Management Relations Act, 1947.

I realize that it is hardly possible for you, as Attorney General, to give a definite or final answer at this time with regard to the many questions arising under section 302. However, I think it is in the interest of good labor relations for me to write to you at this time to submit to you the views of the Solicitor of Labor so that I may have your advice as to conclusions he has reached.

The trust agreement referred to, a copy of which is attached, provides for the payment by the employers in question to a trustee of certain percentages of the sales price of phonograph records produced by employees who are union members during the periods between September 20, 1943, and December 31, 1947, and between October 1, 1948, and December 31, 1953. The trustee is to expend the funds so collected on musical performances where no admission fee is to be charged and without any profit to the trust fund, in connection with patriotic, charitable, educational, and similar programs. The purpose of the fund is to provide employment for unemployed instrumental musicians, whether or not members of the union, and thereby promote appreciation of instrumental music by the general public.

You will note that the trust agreement provides that the trustee is to be designated by the recording companies, and successor trustees are to be selected by the Secretary of Labor. In the event, however, that applicable laws in the future should not prevent such action, the president of the union may then designate the successor trustee. The union is given certain limited rights and privileges with respect to the administration of the trust agreement, sometimes alone and sometimes in connection with other organizations as provided by paragraph 3, subsection (c), clauses (iv) and (v) of the agreement. Of principal importance is clause (v), which requires union certification as to services received or contracted for prior to any disbursement by the trustee.

In the light of the agreement and the accompanying explanatory documents, the question which appears to require consideration is whether the trustee to be created by the agreement is a representative of employees within the meaning of subsections (a) and (b) of section 302, Labor-Management Relations Act, 1947. The Solicitor of Labor, in a memorandum which I attach, has concluded that this question should be answered in the negative.

I would appreciate such views as you may wish to express in this matter.

Respectfully,

MAURICE J. TOBIN,
Secretary of Labor.

Attachment.

MEMORANDUM

DECEMBER 10, 1948.

To: The Secretary.
From: William S. Tyson, Solicitor.
Subject: Trust agreement and labor agreement between certain phonograph-recording companies and a trustee.

You have requested my opinion as to the legality, under the Labor-Management Relations Act, 1947, of a proposed trust agreement to be entered into between certain phonograph-recording companies and a trustee as part consideration for the execution of a labor agreement between these companies and the American Federation of Musicians.

The agreeent provides for the payment by the recording companies to the trustee of certain percentages of the sales price of phonograph records produced by members of the American Federation of Musicians between September 20, 1943, and December 31, 1947, and between October 1, 1948, and December 31, 1953 (par. 2). The trustee is to expend the sums so collected in arranging and organizing the presentation of personal performances by instrumental musicians in areas throughout the United States and Canada in which various local unions of the federation have jurisdiction. Such performances are to be rendered on such occasions and at such times and places, in connection with patriotic, charitable, educational, and similar programs, without any profit to the trust fund, as in the judgment of the trustee will contribute to the public knowledge and appreciation of music (par. 3). According to a memorandum accompanying the trust agreement, its underlying purpose is to provide employment for unemployed musicians, whether or not members of the federation.

The trustee is to be designated by the recording companies collectively, and successor trustee are to be appointed by the Secretary of Labor of the United States. Furthermore, it is specifically provided that the trustee shall not be a representative of labor, or of any union or of employees, within the meaning of

section 302 (b) of the Labor-Management Relations Act, 1947. It is further stated to be the purpose and intent of the parties that the trustee shall not act as a representative of either the federation or any of its members, and neither the federation nor any employees of the recording companies are given any rights with respect to the selection of the trustee. If, however, the Labor-Management Relations Act, 1947, should be repealed, or amended, or otherwise changed so as to permit such action, then, and only then, may the president of the federation designate the successor trustee (par. 6 (c)). Other provisions of the agreement will be discussed below so far as they are relevant.

Subsection 302 (a) of the Labor-Management Relations Act, 1947, prohibits any employer, under threat of criminal penalties, to make any payment of money to any "representative of his employees." Subsection 302 (b) makes it a like offense for a "representative of any employees" to receive any money from the employer. The basic question raised by the trust agreement is whether the trustee is a "representative" of the employees of the recording companies within the meaning of subsections 302 (a) and 302 (b) of the act. Because the conclusion reached herein it is not necessary to consider whether the trust agreement provides for administration of the trust fund in a manner in conformity with the procedures laid down for permissible payments to employee representatives under section 302 (c) (5) of the act.

In using the term "representative" in section 302, it is, of course, clear that Congress had unions or union agents foremost in mind (Congressional Record, May 7, 1947, p. 4805; May 8, 1947, p. 4876). Aside from the limited meaning of the term indicated by the legislative history, it would not in any event seem that, under the trust agreement, there can be any question that the trustee is not a representative of employees. The trustee is designated in the first instance by employers, not by employees or representatives of employees. The trust agreement, in specifically stating that the trustee shall not represent labor, or unions or employees, would seem not only to preclude the appointment of a representative of employees or a union agent as trustee, but also to require the trustee to refrain at all times from representing employees in carrying out the trust agreement. Since the union is given sole power to appoint the trustee only after the Labor-Management Relations Act, 1947, is repealed or so revised as to permit such appointment, no question could be raised concerning this provision, at least so long as section 302 remains in its present form.

The federation does, of course, have a very definite interest in and relation to the trust agreement and the operations of the trustees. It is well to note, for example, that the trustee must consult the federation, among other groups and organization, which are entitled to advise him. Also before making any disbursements the trustee must receive the certification by the federation that services have been received or contracted for, subject to the very real limitation that such certification shall not be withheld unreasonably, and the trustee must furnish the federation, as well as the recording companies, with a semiannual statement and report. Moreover, a proposed labor agreement, to be entered into between the same recording companies and the federation, provides that the trust agreement is one of the considerations for the labor agreement and that it is the intent of the parties that either both agreements, or no agreement, shall be executed.

The above indications of the relationship of the federation to the trust agreement do not, however, affect the independence of the trustee, who is directed to perform his functions "on the sole basis of the public interest" and can accept only such advice as is consistent with his duty not to represent employees. With respect to union certification prior to disbursement, it is believed that this device is merely to prevent erroneous payments. Actually it inures mainly to the benefit of the trustee and his power to override any unreasonable conduct of the federation clearly removes the latter from any position of control over his activities. Similarly, the fact that the federation must be kept informed of the trustee's operations through a semiannual statement and report does not give the federation a right of control over such operations.

As to the provisions of the proposed labor agreement, it would seem quite appropriate for them to be conditioned upon the signing of the trust agreement, in view of the very real interest of the federation in the latter. This interest in achieving the salutary purpose of providing dignified employment for artists who might otherwise be unemployed does not indicate that the federation controls the trustee or that the trustee represents employees where the trust agreement specifically provides against such control or representation.

If the trustee should in fact become a representative of employees by his own action, it would, of course, be a breach of the trust agreement. In this connection I am informed that the recording companies have already indicated their choice of a trustee, who from the information available appears to be an individual unaffiliated with the federation capable of discharging his duties impartially and effectively.

Under all the circumstances it is my opinion that the trust agreement does not conflict with the Labor-Management Relations Act, 1947.

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